SUPREME COURT OF THE [illegible]

OCTOBER TERM, [illegible]

No. 921.

THE UNITED STATES AND THE [illegible],
APPELLANTS,

vs.

JOHNSON BLACKBURNE, PRINCIPAL [illegible]
SILK WATER APPLIED.

APPEAL FROM THE COURT OF [illegible]

FILED MARCH 20, 1905.

(15,543.)

(15,543.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 671.

THE UNITED STATES AND THE CHEROKEE NATION, APPELLANTS,

vs.

JOHNSON BLACKFEATHER, PRINCIPAL CHIEF OF THE SHAWNEE INDIANS.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

JOHNSON BLACKFEATHER, the Principal Chief of the Shawnee Tribe of Indians,
vs.
THE UNITED STATES and THE CHEROKEE NATION.
} No. 16856.

I.—*Petition of the Shawnees. Filed December* 10, 1890.

To the honorable the judges of the Court of Claims:

Your petitioner, Johnson Blackfeather, the principal chief of the Shawnee tribe of Indians, for and on the part of the said Indians, represents and states that he is forty-nine years old, a Shawnee Indian by blood and descent; that he is a member of and the principal chief of the Shawnee tribe of Indians and a farmer by occupation; that he resides at or near the town and post office of Vinita, Cherokee nation, Indian Territory.

Your petitioner avers and further states that the said Shawnee tribe of Indians are located, settled, and reside in the Cherokee nation, Indian Territory, east of 96° west longitude, under the authority and provisions of article fifteen of a treaty made
2 by and between the United States and the Cherokee nation on the 19th day of July, 1866, which article is in words and figures as follows:

"Article XV. The United States may settle any civilized Indians friendly with the Cherokees and adjacent tribes within the Cherokee country on unoccupied lands east of 96°, on such terms as may be agreed upon by any such tribe and the Cherokees, subject to the approval of the President of the United States, which shall be consistent with the following provisions, viz: Should any tribe or band of Indians settling in said country abandon their tribal organization, there being first paid into the Cherokee national fund a sum of money which shall sustain the same proportion to the then existing national fund that the number of Indians sustain to the whole number of Cherokees then residing in the Cherokee country, they shall be incorporated into and ever after remain a part of the Cherokee nation on equal terms in every respect with native citizens; and should such tribe thus settling in said country decide to preserve their tribal organization and to maintain their tribal laws, customs, and usages, not inconsistent with the constitution and laws of the Cherokee nation, they shall have a district of country set off for their use by metes and bounds equal to one hundred and sixty acres, if they should so decide, for each man, woman, and child of said tribe, and shall pay for the same into the national fund such a price as may be agreed upon by them and the Cherokee nation, subject to the approval of the President of the United States, and in cases of disagreement the price to be fixed by the President.

"And the said tribe thus settled shall also pay into the national fund a sum of money, to be agreed upon by the respective parties, not greater in proportion to the whole existing national fund and the probable proceeds of the land herein ceded or sold than their numbers bear to the whole number of Cherokees then residing in said country, and thence afterwards they shall enjoy all the rights of native Cherokees; but no Indians who have no tribal organizations or who shall determine to abandon their tribal organizations shall be permitted to settle east of 96° of longitude without the consent of the Cherokee national council, or of a delegation duly appointed by it being first obtained; and no Indians who
3 have and determine to preserve their tribal organizations shall be permitted to settle, as herein provided, east of 96° of longitude without such consent being first obtained, unless the President of the United States, after a full hearing of the objections offered by said council or delegation to such settlement, shall determine that the objections are insufficient, in which case he may authorize the settlement of such tribe east of the 96° of longitude.

And your petitioner again states and avers that afterwards, in compliance with the authority, directions and provisions of the aforesaid article of the treaty of 1866, on, to wit, the seventh day of June, 1869, the Shawnee tribe of Indians, by their duly authorized and qualified delegates, Graham Rogers and Charles Tucker, met in Washington, District of Columbia, the duly authorized and qualified delegates of the Cherokee nation, H. D. Rees and William P. Adair, and that the said delegates at said time and place, in pursuance of and by the authority of the aforesaid article of the treaty of 1866, entered into the following article of agreement, which in words and figures is as follows:

Agreement Between the Shawnees and Cherokees, Concluded June 7, 1869, *Approved by the President June* 9, 1869.

"Articles of agreement made and entered into at Washington, D. C., this seventh day of June, A. D. 1869, by and between H. D. Rees and William P. Adair, duly authorized delegates representing the Cherokee nation of Indians, having been duly appointed by the national council of said Cherokees, parties of the first part, and Graham Rogers and Charles Tucker, duly authorized delegates representing the Shawnee tribe of Indians, parties of the second part:

"Whereas it is provided by the fifteenth article of the treaty between the United States and the Cherokee Indians, concluded July 19, 1866, that the United States may settle any civilized Indians friendly with the Cherokees and adjacent tribes within the Cherokee country on unoccupied lands east of 96° on such terms as may be agreed upon by any such tribe and the Cherokees, subject to
4 the approval of the President of the United States, which

shall be consistent with certain provisions specified in said article; and

"Whereas the Shawnee tribe of Indians are civilized and friendly with the Cherokees and adjacent tribes, and desire to settle within the Cherokee country on unoccupied lands east of 96°: It is therefore agreed by the parties hereto that such settlement may be made upon the following terms and conditions, viz: That the sum of five thousand dollars belonging to the Shawnee tribe of Indians and arising under the provisions of treaties between the United States and the said Shawnee Indians as follows, viz., for permanent annuity for educational purposes, per fourth article of treaty 3d August, 1795, and third article 10th of May, 1854. one thousand dollars; for interest at five per cent. on forty thousand dollars for educational purposes, per third article of treaty 10th May, 1854, two thousand dollars; for permanent annuity in specie for educational purposes, per fourth article of treaty 29th September, 1817, and third article 10th May, 1854, two thousand dollars, shall be paid annually to the Cherokee nation of said Indians, and that the annuities and interests as recited and the investment or investments upon which the same are based shall hereafter become and remain the annuities and interest and investment or investments of the Cherokee nation of Indians, the same as they have been the annuities and interest and investments of the Shawnee tribe of Indians. And that the sum of fifty thousand dollars shall be paid to the said Cherokees as soon as the same shall be received by the United States for the said Shawnees from the sales of the lands in the State of Kansas known as the absentee Shawnee lands in accordance with the resolution of Congress approved April 7, 1869, entitled 'A resolution for the relief of settlers upon the absentee Shawnee lands in Kansas,' and the provisions of the treaty between the United States and the Shawnee Indians concluded May 10, 1854 and also that the said Shawnees shall abandon their tribal organization.

"And it is further agreed by the parties hereto that in consideration of the said payments and acts agreed upon as hereinbefore stated that the said Cherokees will receive the said Shawnees—referring to those now in Kansas and also to such as properly belong to said tribe who may be at present elsewhere and including those known as the absentee Shawnees now residing in the Indian Territory—into the country of the said Cherokees upon unoccupied lands east of 96°, and that the said Shawnees shall be incorporated into and ever after remain a part of the Cherokee nation on equal terms in every respect and with all the privileges and immunities of native citizens of said Cherokee nation: Provided, That all of the said Shawnees who shall elect to avail themselves of the provisions of this agreement shall register their names and permanently locate in the Cherokee country, as herein provided, within two years from the date hereof; otherwise they shall forfeit all rights under this agreement.

"In testimony whereof the parties hereto have hereunto sub-

scribed their names and affixed their seals on the day and year first above written.

"[SEAL.] H. D. REES,
"[SEAL.] WM. P. ADAIR,
"*Delegates Representing the Cherokee Nation of Indians.*
"[SEAL.] GRAHAM ROGERS,
"[SEAL.] CHARLES TUCKER,
"*Delegates Representing the Shawnee Tribe of Indians.*

"Attest:
"W. R. IRWIN.
"H. E. McKEE.
"A. N. BLACKLIDGE.
"JAS. B. ABBOTT."

And your petitioner again states and avers the fact to be that on, to wit, the said ninth day of June, A. D. 1869, in compliance with and under the authority and provisions of article fifteen of the aforesaid treaty of 1866, the said agreement was approved by the President of the United States, and that at the said time and place the said Shawnee Indians, in compliance with the stipulations, provisions, and obligations and promises made in the said articles of agreement, paid and caused to be paid to the Cherokee nation of Indians as aforesaid the sum of five thousand dollars belonging to the said Shawnee tribe of Indians, as provided by the provisions of treaties made by and between the United States and the Shawnee tribe of Indians, as follows, viz: (1) for permanent annuities for education purposes, per fourth article of the treaty concluded on the 30th day of August,
6 1795, and third article of a treaty concluded on the 10th of May, 1854, one thousand dollars; (2) for interest at five per centum on forty thousand dollars for educational purposes, per third article of a treaty concluded on the 10th of May, 1845, two thousand dollars; (3) for permanent annuity, per fourth article of a treaty concluded on the 20th day of September, 1817, and third article of a treaty concluded on the 10th day of May, 1854, two thousand dollars, and (4) fifty thousand dollars which was received by the United States for the said Shawnee tribe of Indians from the sale of their lands in the State of Kansas under the authority of a resolution of Congress approved April 7, 1869, entitled "A resolution for the relief of settlers upon absentee Shawnee lands in Kansas, and under the provisisns of the treaty made by and between the United States and the Shawnee tribe of Indians concluded May 10, 1854.

And this petitioner further states and avers that the said described amount of five thousand dollars accruing as aforesaid was a continuing or perpetual annuity belonging to and paid to the said Shawnees, and at the time, to wit, on the ninth day of June, 1869, the said Cherokee nation of Indians, by the authority of and under the provisions of the aforesaid article fifteen of the treaty of 1866 and the articles of agreement aforesaid, and that the said amount was by the Cherokee nation of Indians received as stipulated and

provided in the aforesaid article of agreement as perpetual annuities and interests and investments, and from the said time up to and including the present time and all the time, has been paid and has received annually the aforesaid sum of five thousand dollars and for twenty-one years last past, which amounts in the aggregate to one hundred and five thousand dollars.

And your petitioner again avers that the said Cherokee nation of Indians was paid and did receive from the United States the said sum of fifty thousand dollars, as stipulated and provided in
7 the aforesaid articles of agreement made and entered into by and between the said Shawnee Indians and the said Cherokee nation of Indians, and that this last sum was in addition to the sum of five thousand dollars perpetual annuity or investments.

Your petitioner again and further states that as soon as the aforesaid agreement was concluded and approved and within two years from the time aforesaid, to wit, one thousand persons belonging to the said Shawnee tribe of Indians did elect and avail themselves of the provisions of the aforesaid agreement, did register each their names, and did permanently locate in the Cherokee country on unoccupied lands east of 96° west longitude in the Cherokee nation, Indian Territory, and that the said Shawnee Indians and their descendants have been all the time since and are now so located and settled as aforesaid.

And this petitioner further states that at the said time the said Shawnee Indians permanently located in the Cherokee country they were received acknowledged, regarded, and reputed by the Cherokee nation of Indians as part of the Cherokee nation on equal terms in every respect and with all the privileges and immunities of native citizens of the Cherokee nation participating, enjoying, and receiving equally in the payments and distribution of all the moneys and annuities and funds from the Cherokee nation, possessing and enjoying in common all the rights and benefits in the common and public property of the said Cherokee nation equal with a native Cherokee citizen until the 19th day of May, 1883, at which time the Cherokee national legislative council passed over the veto of the principal chief of the Cherokee nation the following act or law:

"An act providing for the payment of the balance due on lands west of 96° *per capita*.

"Be it enacted by the national council, That when the additional amount appropriated by act of Congress of March 3, 1883, shall have been received by the treasurer of the Cherokee nation the
8 principal chief shall cause the same to be paid out *per capita* to the citizens of the Cherokee nation by Cherokee blood.

"Be it further enacted, That for the purpose of carrying out the provisions of this act the principal chief shall, at his earliest convenience, appoint two competent persons in each district to make correct census rolls of the persons entitled, and turn over the same, certified by him, to the treasurer of the Cherokee nation, who shall file the same in his office.

"Be it further enacted, That the persons appointed by the principal chief to take the census shall each be entitled to three dollars per day ($3.00) while in actual service.

"Be it further enacted, That as soon as advised by the proper authorities that the funds are ready it shall be the duty of the treasurer to make requisition for the same, and on receiving the same (said funds) it shall be his duty to pay the same out *per capita* to citizens by Cherokee blood according to the census rolls. * * *

"Be it further enacted, That the treasurer shall make the payments at Tahlequah, Vinita, Fort Gibson, and Webber's Falls.

"Passed by the constitutional two-thirds of National council, May 19, 1883."

This petitioner shows that the act of Congress referred to in the act of the Cherokee council as above is as follows:

"An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, 1884, and for other purposes.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the sum of three hundred thousand dollars is hereby appropriated, to be paid into the treasury of the Cherokee nation, out of the funds due under appraisement for Cherokee lands west of the Arkansas river, which sums shall be expended as the acts of the Cherokee legislature direct, this amount to be immediately available; Provided, That the Cherokee nation, through its proper authorities, shall execute conveyances, satisfactory to the Secretary of the Interior, to the United States in trust only for the benefit of the Pawnees, Poncas, Nez Perces, Otoes, and Missourias and Osages now occupying said tract as they respectively occupy the same before the payment of said money."

9 This petitioner alleges the fact that the said sum of three hundred thousand dollars was by the Cherokee nation received as provided and by the treasurer of the Cherokee nation paid out *per capita* to Cherokee citizens by blood only, as directed by the aforesaid act of the Cherokee national council, and by the said acts of the Cherokees the said Shawnee Indians were deprived of and defrauded of their legal and just dues and rights granted and guaranteed to them, the said Shawnee Indians, by the aforesaid article of the treaty of 1866 and the articles of agreement made by and between the parties aforesaid and approved on the ninth day of June, 1869.

Your petitioner again states that Congress passed and the President approved an act, on the 19th day of October, 1888, entitled "An act to secure to the Cherokee freedmen and others their proportion of certain proceeds to lands under the act of March third, 1883," * * * which act provides for the reimbursement and payment to the said Shawnee Indians the amount which the said Cherokee nation defaulted, neglected, and refused to pay to the said Shawnee Indians at the time and in the manner above alleged; but that the said Shawnee Indians, at the date and the time of

filing this petition and beginning this suit, have not received the said sum or any part thereof; that the said payment in money should have been to them, the said Shawnee Indians, sixteen dollars *per capita*, and the Shawnee Indians numbered on the rolls, to wit, one thousand persons entitled to receive the said payment.

Your petitioner again states and shows that the said Cherokee nation, by its national legislative council, passed and the principal chief of the Cherokee nation, on the 19th day of May, 1883, approved the following act in words and figures as follows:

"An act to amend an act to tax stock grazing upon Cherokee lands west of the 96th meridian.

"Whereas the unoccupied lands belonging to the Cherokee nation lying west of the 96th meridian, held for Indian settlement under the provisions of the sixteenth article of the treaty of July 19, 1866, and set apart to produce revenue from grazing by the act of which this is amendatory; and whereas the authorities of the United States have called upon the authorities of the Cherokee nation for the enactment of more complete regulations to prevent abuses thereon; and whereas it is desirable that these lands should produce revenue nearly equal to the real value so long as they remain in possession of and under the jurisdiction of the Cherokee nation; therefore

"Be it enacted by the national council, That the principal chief be, and he is hereby, authorized and directed to execute a lease for all the unoccupied lands of the Cherokee nation being and lying west of the Arkansas river to E. M. Hewins, J. W. Hamilton, A. J. Day, S. Tuttle, M. H. Bennett, Ben. S. Miller, A. Drum, E. W. Payne, Charles H. Eldred, directors in trust for the Cherokee Strip Live Stock Association, for the term of five years in consideration of a yearly rental of one hundred thousand dollars for the entire tract.

"Be it further enacted, That the said E. M. Hewins, J. W. Hamilton, A. J. Day, S. Tuttle, M. H. Bennett, Ben. S. Miller, A. Drum, E. W. Payne, and Charles H. Eldred, directors in trust for the aforesaid Cherokee Strip Live Stock Association, entering into the said lease, shall obligate themselves that there shall be no permanent improvements on any portion of the lands so leased, and only such temporary structures as may be absolutely required for the safe and profitable grazing of stock thereon, and all such temporary improvements, including corrals or wire fences, are hereby held and declared to be the property of the Cherokee nation, and the said lease may be terminated on six months' notice given in case the said land shall be disposed of by the Cherokee nation; and the said party leasing shall obligate themselves not to cut, use, or take any timber, or other material from these lands but by agreement with the authorities of the Cherokee nation, and in all cases to faithfully observe the intercourse laws of the United States, and that they shall do
11 all in their power to prevent the stealing or removal of any timber or other material from the lands so leased by any other person or persons; and, further, that the tract herein leased

shall not obstruct any mail or stage line or other necessary public highway; and said lease shall also contain a provision that on failure of said party leasing to meet all payments required by the lease or in any other manner violating its expressed terms or conditions the said lease shall be void and may be so declared by the principal chief of the Cherokee nation, which failure shall work a forfeiture of any and all rights and interests thereon: Provided that none of the three salines reserved to the Cherokee nation by act of Congress or the land reserved therewith shall be included in such lease, but shall be specially excepted therefrom.

"Be it further enacted, That the said one hundred thousand dollars required under the provisions of this act shall be payable semi-annually, in advance, at Tahlequah, on the order of the principal chief into the treasury of the Cherokee nation, and the said semi-annual payments shall be made on the first days of October and April of each year, the first payment to be made on the first day of October, 1883, and that the rights of any person under any tax license issued before the passage of this act shall terminate with the date up to which such persons have paid.

"Be it further enacted, That a record of the lease authorized under the provisions of this act shall be kept in duplicate in the office of the principal chief, who is charged with the execution of this lease, and one in the office of the treasurer of the Cherokee nation, and the report thereof shall be submitted to the council of the Cherokee nation at each annual session.

"Be it further enacted, That should the lease herein granted be declared by the principal chief vacant by default a fresh lease may be executed to any responsible company in accordance with this act: And provided, that in default of any and all payments which may be due the lease shall terminate, and all rights, privileges, or interests in any portion of such or temporary improvements thereon shall cease.

"Be it further enacted, That no person not a member of the Cherokee Live Stock Association shall be permitted to graze any kind of live stock upon any of the Cherokee lands lying west of the Arkansas river without the consent of the said asso-
12 ciation, and the principal chief is hereby authorized to cause the removal of all such persons as intruders.

"Be it further enacted, That the said Cherokee Strip Live Stock Association, by any or either of the above-named directors, shall within thirty days after the approval of this act by the principal chief file with him, in the executive department of the Cherokee nation, their acceptance of the same; whereupon the principal chief shall cause to be issued to the said E. M. Hewins, J. W. Hamilton, A. J. Day, S. Tuttle, M. H. Bennett, Ben. S. Miller, A. Drum, E. W. Payne, and Charles H. Eldred, directors in trust for the aforesaid Cherokee Strip Live Stock Association, a lease in accordance with this act.

"Be it further enacted, That the treasurer, whenever payments are made to him by the Cherokee Strip Live Stock Association, is hereby required to retain the same in the treasury until the same shall amount

to three hundred thousand dollars, and to pay the same out "*per capita*" under the directions of the national council.

"Be it further enacted, That all acts or parts of acts in conflict with the provisions of the foregoing act are hereby repealed.

"Concurred in by the national council May 15, 1883; approved May 19, 1883.

"D. W. BUSHYHEAD,
"*Principal Chief.*"

And that afterwards, to wit, on the fifth day of July, 1883, the principal chief of the Cherokee nation, D. W. Bushyhead, in compliance with the provisions and by the authority of the above act of the Cherokee national legislative council, made and entered into and executed the following agreement or lease in words and figures as follows:

"This indenture, made this 5th day of July, in the year of our Lord 1883, by and between Dennis W. Bushyhead, principal chief of the Cherokee nation, for and on behalf of said nation, party of the first part, and E. M. Hewins, J. W. Hamilton, A. J. Day, S. Tuttle, M. H. Bennett, Benjamin S. Miller, A. Drumm, E. W. Payne, and Charles H. Eldred, directors in trust for and on behalf of the Cherokee Strip Live Stock Association, a corporation organ-
13 ized and existing under and by virtue of the laws of the State of Kansas, for themselves as directors in trust, their successors in trust and assigns, parties of the second part, witnesseth:

"That the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter mentioned, reserved, and contained on the part and in behalf of the party of the second part and their successors in trust and assigns to be well and faithfully kept and performed, doth, by the authority of law in him vested as principal chief by and through an act of the national council, which said act is entitled 'An act to amend an act to tax stock grazing upon Cherokee lands west of the ninety-sixth meridian,' approved in special session May 19, A. D. 1883, which said act is specially referred to and made a part of these presents, lease for grazing purposes only unto the aforesaid E. M. Hewins, J. W. Hamilton, A. J. Day, S. Tuttle, M. H. Bennett, Benjamin S. Miller, A. Drumm, E. W. Payne, and Charles H. Eldred, directors in trust as aforesaid, their successors and assigns, parties of the second part, all and singular the unoccupied lands of and belonging to the Cherokee nation being and lying west of the ninety-sixth meridian and west of the Arkansas river, not including any portion occupied, sold, and conveyed to the Pawnee, Poncas, Nez Perces, Otoes, and Missourias, Osages, and Kansas Indians, or the salines set apart to be leased separately under act of Congress approved August 7, A. D. 1882, as hereinafter set forth, and the said portion leased for grazing purposes, containing 6,000,000 acres of land, more or less, and lying east of the one hundredth meridian; and the said hereinbefore-named parties of the second part, their successors and assigns, shall,

for the purposes herein set forth, have and hold the above mentioned and described premises from and after the 1st day of October, 1883, for and during the term and period of five years next ensuing from said date, subject to the qualifications, restrictions, and forfeitures hereinafter provided for and upon yielding and paying for the same the amount of money as hereinafter provided for.

"And the said parties of the second part, the said E. M. Hewins, J. W. Hamilton, A. J. Day, S. Tuttle, M. H. Bennett, Benjamin S. Miller, A. Drumm, E. W. Payne, and Charles H. Eldred, directors in trust as aforesaid, hereby covenant and agree, on behalf of
14 themselves as such directors in trust for the Cherokee Strip Live Stock Association, their successors in trust and assigns, and not otherwise, in consideration hereof and of the leasing aforesaid, to pay, on the order of the principal chief aforesaid, into the treasury of the Cherokee nation, at Tahlequah, Ind. T., yearly and for each and every one of said five years the sum of $100,000, lawful money of the United States, the same to be paid in two equal semi-annual payments, to be made and so paid in advance, to wit, on the 1st day of October and 1st day of April in each and every year during the said term: Provided always, and it is further covenanted and agreed between the said parties hereto, that if the said semi-annual payment in advance or any part thereof shall remain unpaid after the expiration of thirty days after the date the same shall become due as herein agreed to be paid, or if default shall be made in any of the covenants hereinbefore and hereinafter set forth or as contained and required by the act of the national council approved May 19, A. D. 1883, as aforesaid, on the part and in behalf of the said parties of the second part, then and from thenceforth it may be lawful and it is agreed that the said principal chief or his successors in office may declare this lease forfeited and annulled, and the said party of the first part may enter into and resume possession of the premises herein leased.

"And it is further agreed, in accordance with the act of the Cherokee council, that in case the lands hereinbefore described, or any part of them, included in the terms of this lease shall be disposed of under present existing law or laws hereafter to be passed by Congress of the United States by the said Cherokee nation, that on the party of the first part giving six months' notice thereof to the party of the second part, that then and in that event the terms and conditions of this lease and the lease thereof shall terminate on the expiration of the said six months from the date of said notice to all or any portion of said tract of unoccupied Cherokee land thus sold or disposed of, and the parties to whom the said lands or any portion of them should then be disposed of or sold to may enter into and take possession of the same, but then and in that event the said party of the second part, their successors and assigns, shall not be chargeable with rent on the lands so sold, but shall be allowed a rebate on all subsequent payments made on account of this lease at the rate of one and two-thirds cents per acre per annum
15 on the lands so sold or disposed of. Further, it shall be the privilege of the party of the second part, their successors and

assigns, to erect on said land such fences, corrals, and other improvements as may be necessary and proper and convenient for the carrying on of their business and for utilizing said lands for the purpose for which they are leased.

"And in case this lease shall be terminated as to all or any part of said lands by disposal of the same, as heretofore provided and set out, the said party of the second part shall have the right to remove all of said improvements, fences, and corrals, except such portion thereof as may be made from the timber or other property of the Cherokee nation or timber which has been obtained from the aforesaid tract.

"It shall further be the privilege of the party of the second part, their successors and assigns, to cut from the territory herein leased such timber as may be necessary for building the fences, corrals, and improvements heretofore authorized to be erected on said leased premises and to cut from said land such timber as may be necessary for fire-wood and fuel, but not otherwise, and to commit no waste thereon.

"And the said party of the second part doth further covenant and agree with the said Dennis W. Bushyhead, as aforesaid, and as parts or conditions of this lease or contract well and truly and without deduction or delay to make all payments as required in the foregoing in the manner limited and prescribed; and in case of any failure, as aforesaid, the said party of the second part agrees that they will peaceably surrender the premises herein leased and all improvements and erections thereon.

"And the said party of the second part, their successors and assigns, agree and obligate themselves, and this is one of the conditions of this lease. to make no permanent improvements (the improvements, the right to make which is hereinbefore granted, being temporary improvements) on the aforesaid premises or leased tracts, and only temporary improvements, as authorized by the Cherokee council approved May 19, 1883, hereinbefore referred to; and on the expiration of the lease or its being declared forfeited by default in the payment as hereinbefore provided, then and in either event all improvements, structures, or erections thereon shall be and become the property of the Cherokee nation, and said nation shall have the possession of the same, and all and singular of such
16 erections and improvements shall absolutely revert to and become the property of said Cherokee nation, party of the first part.

"And the said party of the second part further covenant and agree with the said party of the first part as one of the conditions of this lease that they will cut no timber for removal from said lands or take or remove any property being part of the premises so leased or remove or ship any material therefrom, and that they will use all due diligence to prevent the cutting or removing of any timber or other materials therefrom, and that they will observe the intercourse laws of the United States, and that they will obstruct no mail or stage line, and that they will not interfere with the salines located or to

be located under the provisions of the act of Congress before mentioned, approved August 7, A. D. 1882.

"And it is agreed between the parties of the first and second parts that the grounds excepted and reserved from and not included in the terms of this lease necessary for the manufacture of salt at the said salines may and shall not exceed in aggregate for said salines and all of them 100,000 acres, with the right of way to and from said salines such as may be required properly to work them.

"And the party of the second part do hereby obligate themselves, for themselves as directors in trust as aforesaid, their successors and assigns, well and truly to observe and faithfully execute all and singular of the foregoing agreements and covenants, which are declared to be a part of the agreement in consideration of which this lease is granted: and the said party of the first part, principal chief of the Cherokee nation, in accordance with the acts of the national council as aforesaid, and on condition of the payment of the sums of money as hereinbefore stipulated in the manner and with the condition hereinbefore prescribed, and as the further condition that the said party of the second part will well and truly fulfill all the conditions, covenants, and agreements herein set forth, doth covenant and agree by these presents that the said E. M. Hewins, J. W. Hamilton, A. J. Day, S. Tuttle, M. H. Bennett, Ben. S. Miller, A. Drumm, E. W. Payne, and Charles H. Eldred, directors in trust for the Cherokee Strip Live Stock Association, their successors in trust and assigns, shall and may at all times during the said term, subject to the conditions as aforesaid, peaceably hold and enjoy
17 all the privileges of lease on said premises free, clear, and harmless from any let or hindrance whatsoever, together with all privileges and rights of said party of the first part in reference to the same according to law and treaty stipulations.

"Signed and sealed this 5th day of July, A. D. 1883.

"D. W. BUSHYHEAD,
"*Principal Chief of the Cherokee Nation.*
"E. M. HEWINS,
"A. J. DAY,
"M. H. BENNETT,
"BEN. S. MILLER,
"J. W. HAMILTON,
"S. TUTTLE,
"ANDREW DRUMM,
"E. W. PAYNE,
"CHARLES H. ELDRED,
"*Directors of the Cherokee Strip Live Stock Association.*"

And your petitioner again states and avers that afterwards, to wit, on the 5th day of July, 1883, the said Cherokee Strip Live Stock Association did accept the terms, obligations, and covenants of the said lease and the said act of the Cherokee national council, and did take possession of and occupy the lands described in said act and lease for the purposes aforesaid, and did pay annually to the Cherokee nation of Indians, as covenanted and obligated aforesaid, at

Tahlequah, annually the sum of $100,000, and that on, to wit, the 1st day of April, 1886, there was accumulated and paid in as aforesaid into the Cherokee national treasury the sum of $300,000 derived from and paid by the Cherokee Strip Live Stock Association for the rental of Cherokee lands west of the Arkansas river, west of 96° west longitude, in the Cherokee nation, Indian Territory, and that by the directions, terms, and provisions of the act of the Cherokee national council approved May 19, 1883, the Cherokee national treasurer was directed and bound to pay out the said sum of $300,000 *per capita* to citizens of the Cherokee nation equally
18 in amounts with a native citizen of the Cherokee nation; but the said Cherokee nation, knowingly and in violation of the fifteenth article of the treaty of 1866 aforesaid and articles of agreement with the Shawnee Indians and the Cherokee nation of June 9, 1869, and to defraud and to deprive the said Shawnee Indians of their equal and just rights so granted and guaranteed aforesaid, the Cherokee national legislative council passed and the principal chief approved the following act on April 27, 1886, which is in words and figures as follows:

"Construction of the rights of Cherokee citizenship as designed to be conferred upon freedmen and friendly Indians by the 9th and 15th articles of the treaty of 1866.

"Whereas section 20th of art. 3 of the constitution vests the sole power of construing treaty stipulations in the national council, acting in behalf of the nation as one of the parties to any treaty; and

"Whereas, pursuant to this 'power,' the national council did, on the 26th day of November, A. D. 1866, relating to free colored persons and freedmen formerly slaves of Cherokee citizens and contained in the 9th article of said treaty, as well as relating to friendly Indians who might be settled east of 96° of west longitude, according to acticle 15th of said treaty, by declaring such free colored persons, freedmen, and friendly Indians citizens of this nation the same as native Cherokee residents and adopted whites, but omitted to define and construe what rights and privileges did attach to such citizenship as then understood and intended to be confirmed and vested and what rights were reserved by the nation making such grant: Therefore

"Be it enacted by the national council, That the phrase 'all the rights of native Cherokees,' as used in the 9th and 15th articles of the treaty of July 19, 1866, between the United States and this nation is hereby construed to mean the individual rights, privileges, and benefits enjoyed by white adopted citizens of this nation before and at the making of said treaty and who had been by law admitted to 'all the rights of a native Cherokee,' civil, political, and personal, as subjects of the Cherokee nation of Indians, without acquiring any right or title to the Cherokee domain or to the proceeds thereof when made subject to a division among those
19 to whom such domain had been conveyed, all the rights to the lands held and owned by this nation and to the principal

of the proceeds thereof when realized being reserved by and to the original Cherokee owners, as in the case of white adopted citizens as aforesaid, subject to be conveyed or granted only at the option of said owners or for value received according to agreements provided to be made with friendly Indians in conformity with the 15th article of said treaty.

"Be it further construed and declared, That agreeably to such understanding of the 15th article of said treaty the value of the lands west of the Arkansas river having not been computed when ascertaining the just proportion of money to be paid by the Delawares and Shawnees when admitted as citizens of this nation, said tribes were, when adopted, and now are entitled to the above-defined civil, political, and personal rights of individual citizens as subjects of this government, with such rights to the national domain and funds as were by them or either of them paid for, as per agreement made in conformity with the said 15th article, and that any just title to the Cherokee lands west of 96° or to the principal of any of the proceeds thereof was not by them purchased nor by them acquired since.

"Approved April 27, 1866."

This petitioner again states and avers that afterwards, to wit, the 27th day of April, 1886, the Cherokee national treasurer, in compliance with the directions of the aforesaid act of the Cherokee national council, approved on the day last above, and by the order of the principal chief of the Cherokee nation, paid out and distributed the said sum of money, to wit, $300,000, derived and accumulated as aforesaid in the Cherokee nation *per capita* to Cherokee Indian citizens by blood and descent only in the said Cherokee nation, Indian Territory; that the amount of said payment to each person at the said time was $15.50, and that the number of persons of and belonging to the Shawnee Indians who were entitled to and who were not paid any amount at the said time was and is, to wit, one thousand persons; that the said Cherokee nation, by its acts as aforesaid, knowingly, willfully, intentionally, and unlawfully deprived and defaulted and defrauded the said Shawnee Indians out of their just dues and rights granted to them by and under the provisions of the fifteenth article of the treaty of 1866 aforesaid, and the articles of agreement made and entered into by and between the Shawnee Indians and the Cherokee nation of Indians on the 9th day of June, 1869, as aforesaid.

This petitioner shows that after the expiration of the term and time of the aforesaid lease for the lands there described, to wit, on the 1st day of October, 1888, this petitioner is informed and believes, that the Cherokee nation renewed and extended the said lease to the said lands and for the same purpose to the said association for an additional term and period of time of five years at an annual rental of two hundred thousand dollars, and that the said renewal and extension was and is made under the same act of the Cherokee national council, approved May 19, 1883, continuing in force and extending the same conditions, restrictions, reservations,

obligations, and covenants as is set forth in the aforesaid lease of July 5, 1883, aforesaid, and that there has been paid and received into the Cherokee national treasury from the payments made by the said association on the lease and renewal and extension of the same the sum of, to wit, one million of dollars, but there has not been paid out *per capita* only the sum of three hundred thousand dollars; that the said Shawnee Indians have not received said sum or any part thereof so wrongfully withheld from them and lawfully and justly due to them and each one of them; that they have often and repeatedly demanded of and from the said Cherokee nation, the officers and national council thereof, and of the United States Government to be paid to them and each one of them, the said Shawnee Indians, the said sum of money, but that the said Cherokee nation and the United States refuse and still doth refuse to pay or cause to be paid to the said Shawnee Indians the said sum of money or any part thereof.

21 This petitioner again states that on the second day of March, 1889, Congress passed and the President approved an act authorizing the President to create and appoint a commission to negotiate with the Cherokee and other Indians for the sale and cession of all unoccupied lands west of 96° west longitude to the United States belonging to the said Cherokee nation in the Indian Territory; that the said commission is created and authorized as aforesaid and is in treaty negotiations with the said Cherokee nation for the sale and cession of the said lands to the United States; but the said Cherokee nation, by the acts of its national councils and the acts of its officers and by the act of the Cherokee national council approved April 27, 1886, aforesaid, refused to recognize or to allow and will deprive the said Shawnee Indians of their right to participate in the final distribution of said lands or the proceeds of said lands, and will unjustly and unlawfully deprive and withhold from the said Shawnee Indians their rights, benefits, and immunities granted to them as hereinbefore set forth, to the great damage and injury of the said Shawnee Indians, unless this court shall award to them, these Shawnee Indians, their rights and money aforesaid.

This petitioner again states and avers that the said Shawnee Indians have at all times and places faithfully, fully, and honestly kept and performed all their covenants, obligations, agreements, and premises made with the said Cherokee nation and the United States in every particular, and as lawful and law-abiding citizens of the said Cherokee nations, and as obedient and loyal wards of the United States Government; that they, the said Shawnee Indians, have oftentimes and repeated times made complaints and demands to the Cherokee nation and the United States Government for a remedy and a redress of the wrongs and injuries and damages aforesaid; that Congress passed and the President approved the following act and law, which is in words and figures as follows:

22 (Public—No. 335.)

An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee nation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That full jurisdiction is hereby conferred upon the Court of Claims, subject to an appeal to the Supreme Court of the United States as in other cases, to hear and determine what are the just rights in law or in equity of the Shawnee and Delaware Indians, who are settled and incorporated into the Cherokee nation, Indian Territory, east of ninety-six degrees west longitude, under the provisions of article fifteen of the treaty of July nineteenth, eighteen hundred and sixty-six, made by and between the United States and the Cherokee nation, and articles of agreement made by and between the Cherokee nation and the Shawnee Indians June seventh, eighteen hundred and sixty-nine, approved by the President June ninth, eighteen hundred and sixty-nine, and articles of agreement made with the Delaware Indians April eighth, eighteen hundred and sixty-seven; and also of the Cherokee freedmen, who are settled and located in the Cherokee nation under the provisions and stipulations of article nine of the aforesaid treaty of eighteen hundred and sixty-six in respect to the subject-matter herein provided for.

SEC. 2. That the said Shawnees, Delawares, and freedmen shall have a right, either separately or jointly, to begin and prosecute a suit or suits against the Cherokee nation and the United States Government to recover from the Cherokee nation all moneys due either in law or equity and unpaid to the said Shawnees, Delawares, or freedmen, which the Cherokee nation may have before paid out, or may hereafter pay, *per capita*, in the Cherokee nation, and which was or may be refused to or neglected to be paid to the said Shawnees, Delawares, or freedmen by the Cherokee nation, out of any money or funds which have or may be paid into the treasury of or in any way have come or may come into the possession of the Cherokee nation, Indian Territory, derived from the sale, leasing, or rent for grazing purposes on Cherokee lands west of ninety-six degrees west longitude, and which have been or may be appropriated and directed to be paid out *per capita* by the acts passed by
23 the Cherokee council, and for all moneys, lands, and rights which shall appear to be due to the said Shawnees, Delawares, or freedmen under the provisions of the aforesaid articles of the treaty and articles of agreement.

SEC. 3. That the said suit or suits may be brought in the name of the principal chief or chiefs of the said Shawnee and Delaware Indians, and for the freedmen and in their behalf and for their use in the name of some person as their trustee, to be selected by them with the approval of the Secretary of the Interior; and the exercise of such jurisdiction shall not be barred by any lapse of time heretofore, nor shall the rights of such Indians be impaired by any acts passed and approved by the Cherokee national council. Suits may

be instituted within twelve months after the passage of this act, and the law and practice and rules of procedure in such courts shall be the practice and law in these cases; and copies of petitions filed in the case at the commencement of the suit shall be served upon the Attorney General of the United States and on the principal chief in the Cherokee nation by the marshal of the district court for the Indian Territory; and that the costs of the said suits shall be apportioned between the United States and the other parties to such suits as to said court law and equity shall require. The Attorney General shall designate and appoint from the Department of Justice a person who is competent to defend the said Cherokee nation and the United States. And the said Shawnees, Delawares, and freedmen may be represented by attorneys and counsel. And the court is hereby authorized to decree the amount of compensation of such attorneys and counsel fees, not to exceed ten per centum of the amounts recovered, and order the same to be paid to the attorneys and counsel of the said Shawnees, Delawares, and freedmen; and all judgments for any sum or sums of money which may be ordered or decreed by such court in favor of the Shawnees, Delawares, or freedmen, and against the Cherokee nation, shall be enforced by the said court or courts against the said Cherokee nation by execution mandamus, or in any other way which the said court may see fit.

SEC. 4. That the said Shawnee Indians are hereby authorized and empowered to bring and begin a suit in law or equity against the United States Government in the Court of Claims, to recover
24 and collect from the United States Government any amount of money that in law or equity is due from the United States to said tribes in reimbursement of their tribal fund for money wrongfully diverted therefrom. The right of appeal, jurisdiction of the court, process, procedure, and proceedings in the suit here provided for shall be as provided for in sections one, two, and three of this act.

Approved October 1, 1890.

For the purpose of granting to the said Shawnees the relief and redress so sought and prayed for; and the said Shawnee Indians, by virtue of and under the provisions of the said act of Congress, pray to the court to file this their petition, and to make the said United States Government and the Cherokee nation party defendant to this suit, and for the process of this court, as provided and authorized by the aforesaid act, and a rule to the defendant that the answer be filed in the time provided by the rules and laws of proceeding in this court in such cases made and provided; and this petitioner again prays that at the hearing and final determination of this suit the court will enter a judgment against the said Cherokee nation and decree that the said Cherokee nation shall without delay pay to the said Shawnee Indians the sum of $15.50 to each and every one of the said Shawnee Indians for the money which the Cherokee nation did and has refused to pay to the said Shawnee Indians, to wit, in the month of April, 1886, which sum is, to wit, the sum of, to wit, fifteen thousand and five hundred dollars,

and that as damages for the unlawful detention of the said sum of money the court will decree that the Cherokee nation pay to the Shawnee Indians an additional sum of ten per centum per annum from the 27th day of April, 1886, on the said sum of fifteen thousand and five hundred dollars, or so much as may be found to be due on the said principal amount, taking as a basis the number of Shawnee persons entitled to the share and fifteen dollars and fifty cents as a share; and that the court will finally decide and
25 decree that the said Shawnee Indians are a part of the Cherokee nation, and that they shall ever after remain as such, on equal terms in every respect and with all the privileges and immunities of a native citizen of said Cherokee nation, and that they shall from hence have and receive from the Cherokee nation and the United States Government each their equal share and benefits in the distribution and proceeds in all lands and common property of and belonging to the Cherokee nation and in the leasing, sale, cession, and disposal of all lands to the United States, or in any way they may be sold or ceded or disposed of, belonging to or possessed by the Cherokee nation west of the 96 degree of west longitude, Cherokee nation, Indian Territory; and that, if necessary and requisite, the court will order an account to be taken and stated by the United States and the Cherokee nation of all moneys due to and unpaid and withheld by the Cherokee nation due to the said Shawnee Indians, derived from the proceeds of the lease to the said Cherokee Strip Live Stock Association, lands west of the 96 degree west longitude and west of the Arkansas river, Cherokee nation, Indian Territory, as provided by the acts of the Cherokee national council, approved by the principal chief of the Cherokee nation May 19, 1883, and other acts and ordinances thereunder as aforesaid, and that a judgment and a final decree be entered and enforced by the court decreeing and ordering the Cherokee nation without delay to pay out *per capita* to the said Shawnees all such sums of money as shall be found to be due and unpaid, and that the said Cherokee nation be ruled to pay all costs and attorneys' fees to the attorneys of the said Shawnee Indians, which shall be found to be reasonable and just to the court, not exceeding ten per centum on all the money or moneys and amounts of land or the proceeds of the sale or cession of land or lands involved or recovered in this suit; and for such other and further relief
26 as to the court shall appear to be right and just in the premises; and this petitioner will ever pray, &c.

his
JOHNSON x BLACKFEATHER.
mark.

Witnesses:
THOMAS DOUGHERTY.
HENRY F. A. ROGERS.

Johnson Blackfeather, first sworn, on his oath states that he has read and heard read and interpreted from the English language into the Shawnee language the above and foregoing petition, and

that he knows the contents thereof and understands the meaning of the same, and that the statements, averments, and allegations of the said petition are true of his own knowledge except as to the matters and things therein stated on information and belief, and as to all such matters and things he believes all such to be true.

Subscribed and sworn to before me, United States commissioner, this 13th day of November, 1890.

[SEAL.] CHARLES H. MASON,
A U. S. Commissioner and ex Officio Notary Public for First Judicial Division in the Indian Territory.

J. W. DENVER,
C. BROWNELL,
Of Counsel and Attorneys for the Petitioner.

27 II.—*Supplemental Petition Filed by Leave of Court. February 3, 1891.*

To the honorable the judges of the Court of Claims:

Your petitioner, Johnson Blackfeather, for and on the part of the Shawnee tribe of Indians, under the authority and by virtue of the act of Congress passed and approved October 1, 1890, entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee nation, and for other purposes," represents and states that by instructions to Messrs. James W. Denver and Charles Brownell, the authorized counsel and attorneys for petitioner and the Shawnee Indians, he directed and caused a petition to be filed in this honorable court against the defendants herein on the 10th day of December, 1890, and that the said petition stands in this court as number 16856.

That among other things and claims alleged and wrongs complained of against the defendants in the said original petition are that on the 15th day of May, 1883, the Cherokee national legislative council passed, over the veto of the principal chief of the Cherokee nation, "An act to amend an act to tax stock grazing upon Cherokee lands west of the 96th meridian" (as fully set out on pages 11 to 23, inclusive, in the original petition and 10 to 12, inclusive, in the printed copy of the original petition filed with the original).

That the said act authorized and empowered the principal chief of the Cherokee nation to lease for the term of five years all the unoccupied lands of or claimed by the Cherokee nation lying west of the Arkansas river, Cherokee nation, Indian Territory, in consideration of an annual rental of one hundred thousand dollars for the entire tract of land to E. M. Hewins, J. W. Hamilton, A. J. Day, S. Tuttle, H. M. Bennett, Ben. S. Miller, A. Drum, E. W. Payne, and Charles Eldred, directors in trust for the "Cherokee Strip Live Stock Association," alleged to be a corporation organized and existing under and by virtue of the laws of the State of Kansas; that afterwards, under and by virtue and authority of the aforesaid act, on, to wit, the 5th day of July, 1883, Denis W. Bushyhead, the principal chief of the Cherokee nation, did make and execute the

lease as aforesaid, to the said named persons, for themselves as directors in trust for the said association, for the term of five years at the annual rental of one hundred thousand dollars (which lease is fully set out in the printed copy of the original petition on pages 12 to 17 inclusive).

And it is further alleged in the said original petition that the said named directors in trust for the said association did take possession of the said tract of land for the purposes as provided by the said lease, and did pay annually to the treasurer of the said Cherokee nation one hundred thousand dollars during all of the said
28 term of five years, which aggregates five hundred thousand dollars, and that the said act of the Cherokee national council further provides that the treasurer of the Cherokee nation, whenever payments are made to him by the said association, he shall be required to retain and keep the money in the Cherokee national treasury until the amount of three hundred thousand dollars has been paid in and accumulated, and then the said treasurer is authorized to pay the said three hundred thousand dollars out *per capita* in the Cherokee nation under the directions of the Cherokee national council.

This petitioner again states that after the expiration and determination of the said term of the said lease of five years from the said 5th day of July, 1883, on, to wit, the 1st day of July, 1888, the said Cherokee national legislative council, by an act or joint resolution, authorized the continuation and extension of the aforesaid lease of the said lands to the said association for an additional or extended time or term of five years from the said, to wit, 5th day of July, 1888, at an annual rental of two hundred thousand dollars, payable in the same manner as provided in the aforesaid lease, to the said national treasurer of the Cherokee nation, and that the said association did then and there keep and remain and continue in possession of the said tract of land, under the permission and provisions of the aforesaid lease, until, to wit, the 1st day of December, 1890.

This petitioner avers that on the 17th day of February, 1890, the President of the United States made and issued his proclamation annulling and cancelling the aforesaid lease and warning and ordering the said association and all persons to leave and vacate the aforesaid lands, with all their live stock, by the 1st day of October, 1890. (Copy of the said proclamation herewith attached and marked (A).)

And that afterwards, on the 19th day of September, 1890, the President issued his second proclamation, extending the time for the aforesaid association and all persons to vacate and leave
29 the said lands, with all of their live stock, to the 1st day of December, 1890. (Copy of the said proclamation herewith attached and marked (B).)

And that afterwards, to wit, on the 1st day of December, 1890, the said association did leave and vacate, with all of their live stock, the said tract of land as required by the aforesaid proclamations.

This petitioner further states that he is informed and believes that

at the time the said association vacated and left the aforesaid lands, with all their live stock, the said association and the said named persons justly owed to the said Cherokee nation, under the provisions and covenants of and in the aforesaid lease, for a balance or remainder on account of the leasing and grazing the said lands the sum of, to wit, $100,000, and that at said time the said association and the said named persons refused to pay to the said Cherokee nation the said sum or any part thereof, and that they, the said named persons, still refuse to pay to the Cherokee nation the said sum of money, to the great damage and injury of the Shawnee and Delaware Indians and the freedmen of the Cherokee nation.

This petitioner avers that the said Shawnee Indians are incorporated into the Cherokee nation and will ever after remain a part of the said Cherokee nation on equal terms in every respect and with all the privileges and immunities of a native citizen of the said Cherokee nation, and that the said Shawnee Indians claim a right to have the aforesaid sum of money collected and paid into the Cherokee national treasury, and that the said Shawnee Indians will suffer great damage and injury and loss equally with a native Cherokee if the said sum of money is not collected and secured by the aid of this honorable court in these proceedings.

2. This petitioner again and further states that on, to wit, the 26th day of November, 1890, the said Cherokee national legislative council passed, over the veto of the principal chief of the said Cherokee nation, an act entitled "An act providing for the distribution *per capita* among the citizens of the Cherokee nation of the moneys arising from the grazing privileges of the country west of the Arkansas river."

(Reference is made to an authenticated copy of the said act, hereto attached and marked Exhibit E.)

That, among other things, the said act provides, authorizes, and empowers the treasurer of the said Cherokee nation to pay out *per capita* to the citizens of the Cherokee nation who are of Cherokee blood and descent $300,000, or all the money that may come into the said Cherokee treasury before the first day of January, 1891, on account of grazing privileges west of 96° west longitude, Cherokee nation; that the said payment shall be begun and made on the second Monday of February, 1891, and that it shall be made to Cherokee Indians who are so by blood and descent only.

This petitioner again avers that by the provisions, stipulations, and obligations of the XV article of the treaty of July 19th, 1866, made by and between the United States Government and said Cherokee nation of Indians, and articles of agreement made by and between the said Shawnee Indians and the said Cherokee nation of Indians June 7, 1869, ratified and approved by the President June 9, 1869.

(Reference is made to the copy of the said article of the treaty and the agreement, set out in full in the original petition on pages 1 to 6, inclusive, and in the printed copy of the original, on file, on pages 2 to 5, inclusive.)

The said Shawnee Indians are incorporated into and shall ever

after remain a part of the Cherokee nation, on equal terms in every respect and with all the privileges and immunities of native citizens of the Cherokee nation.

This petitioner again avers that the amount of money here appropriated and authorized to be so paid out is money derived from the payments made, at the times specified in the said lease
31 contract, by the said Cherokee Strip Live Stock Association, for the occupying and grazing of the said lands, and that the said act of the said Cherokee national council, and the payment of the said money as appropriated and directed, is a direct violation and to defraud the said Shawnee Indians of their rights in the premises, and that the passage of the aforesaid act by the said council is wilful and intentional and done to defraud and to deprive the said Shawnee Indians out of their just proportion or share of the said sum of money; that the said Shawnee Indians number, to wit, one thousand persons; that the payment *per capita* out of the said sum of $300,000 is estimated will be, to wit, sixteen dollars and fifty cents *per capita*. This aggregates sixteen thousand and five hundred dollars.

And this petitioner further avers and states that unless the defendant-, The Cherokee Nation, be and are restrained and enjoined by the order of this court from paying out the said sum of $300,000, as provided in said act of the Cherokee council, and the said sum of $16,500 be segregated and paid into this court, this petitioner, The Shawnee Indians, will suffer great and irreparable damage and wrong in the premises.

The said Shawnee Indians here make their claim to the said last-named sum of money as justly due to them and to each of them equally in every respect with a native Cherokee Indian in the Cherokee nation, Indian Territory; and that Joel B. Mays, the principal chief of the said Cherokee nation, and Robert Ross, the treasurer of the said Cherokee nation, or their successors in office, be ordered, directed, and required by this honorable court to deposit and pay to this court, as the court may direct, the said sum of sixteen thousand and five hundred dollars, for the purpose of indemnifying the said Shawnee Indians in the said payment and to be ordered to be paid by the court to the said Shawnee Indians, and that the said principal chief and treasurer of the said Cherokee nation and their successors in office be enjoined and restrained
32 by an injunction order issued out of this court and under the seal of this court from making said payment of the said sum of money or ordering or directing that the said sum of money shall be paid or delivered to be paid to any person or persons in the said Cherokee nation, as provided and authorized by the said act of the Cherokee national council, passed on the 26th day of November, 1890, until after the final decisions of the suits begun and pending in this court and of a right to be appealed to the Supreme Court, as provided and authorized by the aforesaid act of Congress passed and approvd October 1, 1890.

This petitioner again states that the matters of claims and wrongs and injuries complained of in this supplemental petition transpired

and occurred and were committed, appeared, and came to the knowledge of this petitioner since the time of the passage and approval of the aforesaid act of Congress on the 1st day of October, 1890, and after the time and date of filing this petitioner's original petition in this court against the within defendants.

Wherefore this petitioner prays that the said defendants may be compelled to come in and answer this petitioner's petition, but not under oath, an answer under oath being expressly waived; and that they in their answer truly and faithfully set up and state what amount of money, if any, is due and unpaid from the aforesaid Cherokee Strip Live Stock Association to the said Cherokee nation on account of said lease contract for grazing live stock on the said described lands; and that E. M. Hewins, A. J. Day, M. H. Bennett, Ben. S. Miller, J. W. Hamilton, S. Tuttle, Andrew J. Drumm, E. W. Payne, and Charles H. Eldred, directors in trust for the Cherokee Strip Live Stock Association, may be by the usual process of this court compelled to be and appear, as this court may order and direct, and each or all of the said named be examined and required to state under oath what amount of money, if any, they or either of them, individually or collectively, as directors aforesaid or
33 the said association, are owing to or do owe to and is unpaid to the said Cherokee nation on account of said lease contract with the said Cherokee nation, and that such an amount as shall be so found to be due and unpaid shall be accounted for by the said Cherokee nation, and the court will direct, order, and decree that the Shawnee Indians' proportionate share of the said amount which may be so found to be due shall be by the said Cherokee nation paid over to the said Shawnee Indians, as alleged and claimed in section one of this petition.

And this petitioner further prays this honorable court that Joel B. Mayes, the principal chief, and Robert Ross, the treasurer of the said Cherokee nation, and their successors in office, be ordered and directed, under a penalty, by this court, within a day or time certain, to deposit and pay into this court for the use and benefit of the said Shawnee Indians, as the court may direct, the sum of sixteen thousand and five hundred dollars out of the said sum of $300,000 appropriated and authorized by the aforesaid act of the Cherokee national council, passed on the 26th day of November, 1890, directing the said treasurer to pay out *per capita* to Cherokee Indians who are Cherokee Indian citizens by Cherokee blood and descent in the Cherokee nation, Indian Territory.

And that the said named principal chief and the said named treasurer and their successors in office and all the officers of the said Cherokee nation may be enjoined and restrained by an order of injunction issuing out of and under the seal of this court, from making said payment of $300,000 or any part thereof as aforesaid during the pendency trials, and determination of the suits for the prosecution of the claims in this court and appeal to the Supreme Court, as provided by the statutes of the United States, in these claims, and until a final decision is made by the courts in these claims and suits.

for the removal of the live stock herded upon said outlet is extended to November 1st as to one-half thereof, and to December 1st next as to the residue thereof and as to all property and employees.

BENJ. HARRISON.

September 19, 1890.

36 EXHIBIT E.

(Copy.)

An act providing for the distribution *per capita* among the citizens of the Cherokee nation of the monies arising from the grazing privileges of the country west of the Arkansas river.

SEC. 1. Be it enacted by the national council, That the treasurer be, and he is hereby, directed to pay out *per capita* to the citizens of the Cherokee nation by virtue of their Cherokee blood three hundred thousand dollars or all that may come into the treasury prior to the first day of January, 1891, on account of grazing privileges west of 96 degrees west longitude.

SEC. 2. Be it further enacted, That the payment herein provided for shall be made at the court-houses in each of the nine districts, to begin on the second Monday in February, 1891, or as soon thereafter as practicable, to heads of families, to guardians for wards in their charge, to any person who shall have reached their majority, and shall pay to each individual in person so entitled, and who only shall be authorized to receive and receipt therefor.

SEC. 3. Be it further enacted, That children born to persons herein provided for since the last census has been taken and up to the first day of January, 1891, shall be entitled to participate in said fund, and the treasurer shall give notice to the clerks of the several districts, whose duty it shall be to give notice by posting this section at the several voting precincts for general information; and all persons claiming under this section shall be required to appear before the clerk of their respective districts and certify to their claims under oath, giving name and age and family to which they belong, and shall present them to the treasurer not later than the 10th day of February, 1891, and no claim shall be allowed for any child born later than the 31st day of December, 1890.

SEC. 4. Be it further enacted, That the treasurer shall, before making the payment in each district, notify the sheriff of the district wherein the payment is to be made, and it shall be the duty of such sheriff to appoint a guard of such number of responsible persons as he may designate, not exceeding five, to meet the treas-
37 urer and act as an escort and guard, under his direction, until discharged by him, and such persons shall be allowed the same compensation as other guards now provided for by law.

SEC. 5. Be it further enacted, That the treasurer is hereby authorized and directed to prepare from the census rolls already provided and now in the executive office a list or roll of each separate district, to include citizens by virtue of their Cherokee blood only, from which the payment hereby authorized shall be made, and he

is hereby directed to employ ten single women fifteen days, at two dollars and fifty cents each per day, to be paid out of the money herein appropriated, and the principal chief is hereby directed to issue his warrants for the same.

November 15, 1890.

L. B. BELL,
President of the Senate.

A. H. NORWOOD,
Clerk of the Senate.

Concurred in by council November 21, 1890.

WM. H. BARKER,
Speaker of Council.

WM. P. THOMPSON,
Clerk Council.

NOVEMBER 26, 1890.

This bill having been returned to the senate without the approval of the principal chief and his reasons for refusing to sign the same, the senate by a vote of thirteen to four, passed the bill, two-thirds of the senate voting to pass the bill notwithstanding the chief's veto.

L. B. BELL,
President of the Senate.

A. H. NORWOOD,
Clerk of the Senate.

Passed the council by a vote of twenty-five to nine this November 26, 1890.

WM. H. BARKER,
Speaker Council.

WM. P. THOMPSON,
Clerk Council.

I, Connell Rogers, executive secretary of the Cherokee nation, hereby certify that the foregoing three pages of legal cap is a true and correct copy of a law passed by the national council November 26, 1890, in the matter of the proposed distribution of $300,000.00 *per capita* as is on file in this department.

Witness my hand and the seal of the Cherokee nation this December 10, A. D. 1890.

[SEAL.]

CONNELL ROGERS,
Executive Secretary, C. N.

38 III.—*Separate Answer of the Government of the United States. Filed April* 23, 1892.

The defendant, The Government of the United States, answers the petitioner herein, and says:

(1) That the United States denies each and every material allegation therein contained.

(2) The Government also says that the $300,000 appropriated by

the act of June 30, 1884 (22 Stat. L., p. 624), and paid to the Cherokee nation for the "lands west of the Arkansas river," and by the Cherokee nation paid out to the Cherokees "by blood," was equalized to the Shawnee Indians by the appropriation of $75,000 by the act of Congress of October 19, 1888 (25 Stat. L., p. 609), and the payment to them of their proportionate share of said last-named sum in accordance with the said act of October 19, 1888, and that the matter of the $300,000 has been thereby fully paid and wholly satisfied. The said $75,000 was charged against the Cherokee national fund.

(3) That the Government has received no part nor the whole of the funds alleged to have been realized from the grazing privileges of the Cherokee lands sued for therein, and the United States disavows any responsibility for the rental of the so-called Cherokee "outlet" to the Cherokee Strip Live Stock Association, by the indenture of July 5, 1883, set out in the petition, and the moneys collected in that behalf; and the Government is in no way interested in the rents and profits of the "outlet."

(4) The United States, further answering, says: That the Government is only interested in the Cherokee nation to the extent that absolute justice may be done to all the parties concerned in that interesting *quasi* nation, and, therefore, asks that no judgment go against the Cherokee nation for a share in the said rents and profits unless it is clearly lawful and right, and that no judgment be found against the interests of the United States.

(5) The Government also says:

That of the moneys realized from the rents and profits of the "outlet," there have been distributed to the Cherokees by blood $593,625.

Wherefore, the United States invokes the judgment of the court.

JOHN B. COTTON,
Assistant Attorney General.
JOHN C. CHANEY,
Assistant Attorney.

39 IV.—*Defendants' Counter-claim. Filed April* 26, 1893.

The defendants plead to the petition herein and say:

(1) That the Cherokee nation has appropriated no money to the Cherokees "by blood" belonging to the Shawnee Indians who were incorporated into the Cherokee nation by the agreement of June 7 (9), 1869, between the said Cherokee nation and the said Shawnees. But that under an act of Congress passed and approved October 19, 1888 (25 Stat. L., 608), under an erroneous interpretation of said agreement, the Shawnee Indians improperly and illegally accepted and received of the Cherokee national fund $11,451, which is now due and owing from the said Shawnee Indians to the Cherokee nation, and which sum the claimant, in equity and in good conscience, ought to pay to the said Cherokee nation, and the defendants hereby demand of the claimant said sum.

(2) That the amount of the Cherokee national fund, in which

the Shawnees were to share under their agreement of incorporation into the Cherokee country, was $1,098,463.32, which national fund has increased from the properties of the Cherokees by blood to the sum of $2,636,634.13, in all of which the Shawnees have shared upon an equality with the Cherokees. Now, the defendants say that the Shawnees have illegally shared in $1,538,170.81 and without right, and that there is due from the Shawnees to the Cherokee nation the portion of the moneys thus shared by and paid to them, together with 5 per cent interest thereon from the date of the respective disbursements to, and use of, said funds by the said Shawnees.

Wherefore defendants demand judgments and all proper relief.

JOHN C. CHANEY,
For the Government.
MAXWELL & CHASE,
For the Cherokee Nation.

40 V.—*Defendants' Joint and Several Answer. Filed April* 26, 1893.

The defendants jointly and separately answer the petition of the claimant herein, and say:

(1) That each and every material allegation in said petition is denied.

(2) That the $300,000 appropriated by the Congress of the United States June 30, 1884 (22 Stat. L., U. S., p. 624), and paid to the Cherokee nation on account of the lands west of the Arkansas river, and by the Cherokee nation paid out to the Cherokees "by blood" under authority of an act of the Cherokee national council approved May 19, 1883, was properly and legally paid to those solely entitled thereto; that said act of the Congress of the United States authorizing the disbursement of the same "as the acts of the Cherokee legislature direct," was passed with full knowledge of the existing act of the said Cherokee national council and in approval thereof. And the defendants further say that, by the appropriation and payment to the Shawnee Indians of their proportionate share of the $75,000, and charged to the Cherokee national fund, in the act of Congress approved October 19, 1888 (25 Stat. L., U. S., p. 609), the payment of the said $300,000 to the Cherokees has been equalized to the Shawnee Indians, and the claimant's allegations have been in that behalf satisfied, and the defendants further say that the Shawnees have received by said "act" $11,451 from the Cherokee national fund, to which said sum they were not entitled under said agreement of June 7 (9), 1869, nor any part thereof. The defendants also say that the Shawnee Indians were to share in the national fund of the Cherokee nation existing at the date of the said agreement, viz., $1,098,463.32, and they were not to share in any addition to this fund if it should be increased from the properties of the Cherokee people, and said parties say that said funds have been increased from this source to the sum of $2,636,634.13, in all of which the said Shawnees have illegally shared.

(3) That the Shawnee Indians were incorporated into the Cherokee nation under an agreement between the Cherokee nation and the Shawnee Indians, entered into June 7 (9), 1869, pursuant to a treaty between the United States and the Cherokee nation, of date July 27, 1866, wherein and whereby the Shawnee Indians
41 were granted and settled upon "unoccupied lands east of the ninety-sixth degree" west longitude, within the Cherokee domain, in the Indian Territory of the United States; and the said lands were "set apart" to and given the Shawnees for their sole and exclusive use and behoof, and they were to have no rights whatever in any other lands of the Cherokee country; that the Shawnee Indians were granted the "unoccupied lands of the Cherokee country east of the ninety-sixth degree of west longitude," and incorporated into the Cherokee nation upon equal terms in every respect with the citizenship of native Cherokees, and with the same rights, privileges, and immunities with that of the native Cherokee in all civil, political, and personal relations, beyond which bounds he cannot go.

(4) The defendants, further answering the petition herein, say that the Shawnee Indians, having no right to or interest in the so-called Cherokee "outlet," which was leased by the Cherokee nation to the Cherokee Strip Live Stock Association by the indenture of July 5, 1883 (set out in the petition at page 12), pursuant to the terms of an act of the Cherokee legislature, approved May 19, 1883 (page 10 of the petition), are entitled to none of the proceeds of the rental thereof; and the defendants say that the Cherokee people are solely and of right entitled to the whole of the said proceeds, and that the Cherokee nation is obliged to account to the native Cherokee, and to him only, for the rents and profits of the "outlet," which is his sole and separate property.

(5) The defendants also say that the Cherokee nation has rightfully, properly, and legally distributed to the Cherokees by blood $593,625 rents and profits arising from the said lease of the "outlet" to the said Cherokee Strip Live Stock Association.

Wherefore the defendants and each of them demand judgment, and all proper relief in the premises.

JOHN C. CHANEY,
For the Government.
MAXWELL & CHASE,
For the Cherokee Nation.

42 VI.—*Replication of Claimant to the Defendants' Counter-claim,* (*Filed May* 4, 1893.)

Now comes the petitioner in the above-entitled cause, by Charles Brownell, his attorney-in-fact, and in reply to the defendants' counter-claim, filed on the 26th day of April, 1893, in this cause pending in this court, as appears on pages 119 and 120 of the Record in the case, denies the allegation as appears in the said counter-claim, under the first section thereof, and denies that the said Shawnee Indians, as a tribe or as individual*ly*, owe to the said Cherokee na-

tion $11,451 or any part thereof, and further deny the allegation, as appears in the second section of said counter-claim, and that they, the said Shawnees, have illegally shared in $1,538,170.81 or any other sum of money, and that there is not one cent due from the said Shawnees as a tribe, band, or nation of Indians or individual Indians to the said Cherokee nation, as therein alleged and demanded; but, on the contrary, this petitioner reaffirms the allegations as set out in this petitioner's petition and all of the pages of the Record from page 1 to 110, inclusive, and particularly set out in the recapitulation of the items claimed, as appears on pages 109 and 110, inclusive. Therefore this petitioner prays this honorable court to dismiss the said counter-claim without further reply from this petitioner and without *cost* additional cost and fee to the defendant.

CHARLES BROWNELL,
Attorney for Petitioner.

UNITED STATES OF AMERICA,
In the District of Columbia, } ss:

Charles Brownell, being first sworn, on oath says that he is
43 the attorney-in-fact for the petitioner in this case; that his power of attorney was signed and duly acknowledged by the petitioner on the 13th day of November, 1890, and filed in this case in this court January 26th, 1891, as will appear; that he has read the within and foregoing reply of the petitioner to the counter-claim of the defendants, filed in this cause on the 26th day of April, 1893, and that he knows the contents thereof; that the same are true to his knowledge and belief.

CHARLES BROWNELL,
Attorney-in-fact for the Petitioner and the Claimants.

Subscribed and sworn to before me on this 4th day of May, 1893.

FRANK A. BRANAGAN, [SEAL.]
Notary Public.

Copy received.

JOHN C. CHANEY,
For the Government.

44 VII.—*Findings of Fact Filed by the Court.*

This case having been heard by the Court of Claims, the court, upon the evidence, find the facts as follows:

I.

June 7, 1869, the Cherokee nation and Shawnee tribe, at the city of Washington, entered into the following articles of agreement:

Articles of agreement made and entered into at Washington, D. C., this seventh day of June, A. D. 1869, by and between H. D. Reese and William P. Adair, duly authorized delegates representing the Cherokee nation of Indians, having been duly appointed by the national council of said Cherokees, parties of the first part, and

Graham Rogers and Charles Tucker, duly authorized delegates representing the Shawnee tribe of Indians, parties of the second part:

Witnesseth, whereas it is provided by the fifteenth article of the treaty between the United States and the Cherokee Indians, concluded July 19th, 1866, that the United States may settle any civilized Indians, friendly with the Cherokees and adjacent tribes, within the Cherokee country, on unoccupied lands east of 96°, on such terms as may be agreed upon by any such tribe and the Cherokees, subject to the approval of the President of the United States, which shall be consistent with certain provisions specified in said article; and

Whereas the Shawnee tribe of Indians are civilized and friendly with the Cherokees and adjacent tribes, and desire to settle within the Cherokee country on unoccupied lands east of 96°:

It is therefore agreed by the parties hereto that such settlement may be made upon the following terms and conditions, viz:

That the sum of five thousand dollars belonging to the Shawnee tribe of Indians, and arising under the provisions of treaties between the United States and said Shawnee Indians, as follows, viz:

For permanent annuity for educational purposes, per fourth article treaty third August, 1795, and the third article treaty tenth of May, 1854, one thousand dollars;

For interest at five per centum on forty thousand dollars for educational purposes, per third article treaty 10th May, 1854, two thousand dollars;

For permanent annuity in specie for educational purposes, per fourth article treaty 29th September, 1817, and third article, 10th May, 1854, two thousand dollars;

Shall be paid annually to Cherokee nation of Indians, and that the annuities and interest, as recited, and the investment or investments upon which the same are based, shall hereafter become and remain the annuities and interest and investment or investments of the Cherokee nation of Indians, the same as they have been the annuities and interest and investment or investments of the Shawnee tribe of Indians. And that the sum of fifty thousand dollars shall be paid to the said Cherokees as soon as the same shall be received by the United States for the said Shawnees from the sale of the lands in the State of Kansas known as the absentee Shawnee lands, in accordance with the resolution of Congress, approved April 7th, 1869, entitled "A resolution for the relief of settlers upon the absentee Shawnee lands in Kansas," and the provisions of the treaty between the United States and the Shawnee tribe of Indians, concluded May 10th, 1854; and also that the said Shawnees shall abandon their tribal organization.

And it is further agreed by the parties hereto that in consideration of the said payments and acts agreed upon, as hereinbefore stated, that the said Cherokees will receive the said Shawnees—
45 referring to those now in Kansas, and also to such as properly belong to said tribe who may be at present elsewhere, and including those known as the absentee Shawnees now residing in Indian Territory—into the country of the said Cherokees, upon unoccupied lands east of 96°; and that the said Shawnees shall be

incorporated into and ever and after remain a part of the Cherokee nation, on equal terms in every respect and with all the privileges and immunities of native citizens of said Cherokee nation: Provided, That all of said Shawnees who shall elect to avail themselves of the provisions of this agreement shall register their names, and permanently locate in the Cherokee country as herein provided within two years from the date hereof, otherwise they shall forfeit all rights under this agreement.

In testimony whereof the parties hereto have hereunto subscribed their names and affixed their seals on the day and year first above written.

H. D. REESE, [SEAL.]
WM. P. ADAIR, [SEAL.]
Delegates Representing the Cherokee Nation of Indians.
GRAHAM ROGERS, [SEAL.]
CHARLES TUCKER, [SEAL.]
Delegates Representing the Shawnee Tribe of Indians.

Attest:
W. R. IRWIN.
H. E. McKEE.
A. N. BLACKLIDGE.
JAS. B. ABBOTT.

Said articles of agreement were approved by the Secretary of the Interior and the President June 9, 1869.

II.

Seven hundred and seventy-two Shawnee Indians registered their names and permanently settled in the said Cherokee nation; and they or their descendants are now there living in the number hereinafter shown.

III.

The Cherokee nation has received from the said Shawnees under said articles of agreement the sum of $150,000.

The estimated value made by the Cherokee national council of the amount of money stipulated to be paid under this agreement was $195 for each one of said Shawnees.

IV.

The Shawnees were received and recognized by the Cherokee nation on the unoccupied lands east of 96° and were incorporated into the Cherokee nation on equal terms and with all the privileges and immunities of a native Cherokee.

The Cherokee nation, under an act of Congress approved June 16, 1880 (21 Stat. L., 248), received from the United States, in part payment for the sale of Cherokee lands west of 96°, or west of the Arkansas river, the sum of $300,000, and which amount was paid out by the Cherokee nation *per capita* to all Cherokee citizens, share and share alike, and these said Shawnees were included in the said payment; the *per capita* payment at this time was $16.55.

The Cherokee nation, under the act of Congress approved March 3, 1881, received from the United States, as aforesaid, $48,389.46.

This fund was distributed *pro rata* to the general school and
46 orphan funds; no part was paid *per capita*. Under the act of Congress approved March 3, 1883 (22 Stat. L., 624), the Cherokee nation received from the United States, as part payment for the sale of Cherokee lands west of 96°, the sum of $300,000, of which said amount they paid out $274,500 *per capita* to citizens of Cherokee blood only. The Shawnees were by the Cherokee nation excluded from receiving any *per capita* share of said money; the *per capita* amount of this payment was $15.50.

Afterwards Congress, by act of October 19, 1888 (25 Stat., 608), appropriated out of the funds of the Cherokee nation a sufficient amount of money to pay to these said Shawnees *per capita* the $15.50, which was paid to them December 17, 1891.

Afterwards the Cherokee nation received from the Cherokee Strip Live Stock Association, for grazing, leasing, and occupying the defendants' land west of 96°, $500,000. Out of this the Cherokee nation paid *per capita* to Cherokees (by blood only) $295,000. This *per capita* payment was $15.95. The Shawnees were by the Cherokee nation excluded from receiving any share of said money.

Afterwards the Cherokee nation received from the Cherokee Strip Live Stock Association $300,000 for the leasing and grazing the lands aforesaid, and out of this amount the Cherokee nation paid *per capita* the sum of $298,625 to citizens of Cherokee blood only. This *per capita* payment was $13.70.

VI.

December 19, 1891, a commission agreed with the Cherokee nation for the sale and cession of certain lands to the United States for the sum of $8,595,736.12 (sec. 14, act March 2, 1889, 25 Stat. L., 1005).

The following is determined as the population of the Cherokee nation (year 1890):

Cherokees by blood	21,232
Adopted whites	2,011
Delawares	759
Shawnees	624
Creeks	82
Choctaws	11
Negroes	2,052
Total	26,771

The sum paid out to Cherokees by blood was $593,625. The total population being 26,771, the *per capita* of distribution to the rate Shawnees would be 22.17, amounting in all to $13,834.08.

BY THE COURT.

47 VIII.—*Decree of the Court.*

At a Court of Claims held in the city of Washington on the 12th day of June, A. D. 1893, the following decree was ordered to be entered in the above-entitled cause, to wit:

This cause coming on to be heard upon the petition, answers, proofs, and arguments submitted by the parties, respectively, and the court having heard the same, and considered the just rights in law and equity of the Shawnee Indians who are settled and incorporated into the Cherokee nation, in pursuance of the authority vested in the court by the act of Congress entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee nation, and for other purposes," approved October 1, 1890.

And it appearing to the court that under the provision of article 15 of the treaty of July 19, 1866, made by and between the United States and the Cherokee nation and the agreement between the Cherokee and Shawnees, dated June 7, 1869, approved by the President June 9, 1869, the said Shawnee Indians were admitted into and became a part of the Cherokee nation, entitled to equal rights and immunities and to participation in the Cherokee national funds and common property in the same manner and to the same extent as Cherokee citizens of Cherokee blood.

It is ordered, adjudged, and decreed that so much of the acts of the Cherokee national council of May 18, 1883, and of November 25, 1890, as restricts the distribution of funds which were derived from the public domain to citizens of the nation by blood be held and deemed contrary to and in derogation of the constitution of the Cherokee nation, and that the said Cherokee nation or its trustees, the United States, account for, render, and pay to the said Shawnees, out of any funds of the said nation in its national treasury or in the custody of the United States, as trustees, not specifically appropriated by law to other purposes, or out of funds that may hereafter come to the possession of said trustees belonging to the Cherokee nation, a sum equal to the aggregate amount which the Shawnees would have received if the before-mentioned unconstitutional restrictions in said statutes had not existed.

And it is further adjudged and decreed that the claimants in this suit and those whom they represent, being citizens of the Cherokee nation of Shawnee blood or parentage, be adjudged and decreed to be entitled to participate hereafter in the common property of the Cherokee nation in the same manner and to the same extent as Cherokee citizens of Cherokee blood or parentage may be entitled, and that in the distribution of the proceeds and avails of the public domain or common property of the nation among the citizens thereof by distribution *per capita* at any time hereafter, the de-
48 fendants The Cherokee Nation, and the defendants The United States, as trustees of the Cherokee nation, be enjoined and prohibited from making any discrimination between Cherokee citi-

zens of Cherokee blood or parentage and Cherokee citizens of Shawnee blood or parentage to the injury or prejudice of the latter.

And it is further adjudged and decreed as to the participation of the Shawnees in the two funds referred to in the two statutes of the Cherokee nation hereinbefore declared to be unconstitutional, which sums amount in the aggregate to $593,625, that such distribution shall be based on the agreed census of the native adopted citizens as ascertained and agreed upon, to wit, 26,771 being taken as the whole number of Cherokee citizens of all descriptions, and the said Shawnees being taken as 624 of said whole number, and that the fund so ascertained, to wit, the sum of $13,834.08, be paid by the treasurer of the Cherokee nation or by the Secretary of the Interior of the United States to the individual Shawnees, *per capita* (according to the above numbers of 26,771 and 624), who would have been entitled to the same if the unconstitutional restrictions and discriminations in said statutes had not existed.

And it is further ordered, adjudged, and decreed that the respondent, The Cherokee Nation, pay the costs of this suit.

And it is further ordered, adjudged, and decreed that the compensation to be paid to Charles Brownell, the attorney and counsel of the Shawnee tribe, or his heirs, administrators, and executors, or assigns in this cause, be 10 per centum of the amount that the said complainants shall receive under this degree, which compensation is hereby ordered to be paid upon the adjustment and receipt of the amounts as ascertained and paid over or set apart to said Shawnees, to wit, 10 per centum of $13,834.08, being $1,383, and that if any further recovery be had under this decree, the right of the claimant's attorney to further cost and allowance be reserved to be hereafter determined and fixed by the court.

And it is further ordered and decreed that if the judgment hereinbefore declared be not carried out and satisfied within six months from the time a copy of this decree shall have been served on and delivered to the principal chief of the Cherokees and the Secretary of the Interior of the United States, the claimants may apply to the court for such further order, relief, or remedy as may be meet.

BY THE COURT.

The court filed no opinion in this case.

49 IX.—*Application of Defendants for and Allowance of Appeal.*

JOHNSON BLACKFEATHER, Principal Chief of the Shawnee Indians,
vs.
THE UNITED STATES and THE CHEROKEE NATION. } No. 16856.

From the judgment rendered in the above-entitled cause on June 12, 1893, in favor of claimant, the defendants The United States, by their Attorney General, and by Maxwell and Chase, for the Cherokee

nation, on the 22nd day of June, 1893, make application for and give notice of an appeal to the Supreme Court of the United States.

MAXWELL AND CHASE,
For the Cherokee Nation.
JOHN C. CHANEY,
For the United States.

Filed June 22, 1893.

Allowed in open court February 26, 1894.

WILLIAM A. RICHARDSON,
Chief Justice.

50 X.—*Copies of Papers from the Records of this Case Allowed by the Court to be Added to this Record on Appeal on Request of Claimant.*

In the Court of Claims for the United States, December Term, 1893 and 1894.

JOHNSON BLACKFEATHER, the Principal Chief of the Shawnee Tribe of Indians,
vs.
THE UNITED STATES and THE CHEROKEE NATION.
} No. 16856. General Jurisdiction.

Request of the solicitor for the petitioner for certain evidence to be copied and appear in the record of the above-entitled cause for the Supreme Court of the United States.

WASHINGTON, D. C., *March* —, 1894.

And now comes the solicitor for the petitioner in the above-entitled cause and moves this honorable court to direct the clerk of this court to copy and place in the record of this case, for transmittal to the Supreme Court of the United States, the following papers, which are a part of the record in this case in this Court of Claims, viz: (1.) All of the motion filed by the attorney for this petitioner on the 26th day of February, 1894, for the amendments to the findings of facts in the entitled cause and to the decree filed and made by this honorable court on the 12th day of June, 1893 (marked A).

(2, marked B.) The motion and allowance for a call on the Secretary of the Interior of the 15th day of January, 1892, and the reply thereto, as appears on the top of page 74 of the printed Record, and the reply appears on the pages 75 and 76 of the same Record; also the motion for a call and allowance of the motion and the reply, as appears on pages 78 and 79 of this Record.

51 (3.) The supplemental motion for a call on the Secretary of the Interior and allowance by the court, bearing date May 8th, 1893, and the replies of the Secretary and Commissioner of Indian Affairs, which papers were not printed in the record, but appear attached to this motion.

The object of this motion at this time is to place before the Supreme Court the evidence in the case referring to the matter of the

Shawnee census-rolls and the amount of money *per capita* the Shawnees are entitled to under the provisions of this judgment and decree.

CHARLES BROWNELL,
Attorney for Petitioner.

Filed March 19t-, 1894.

Allowed by the court.

W. A. R., *C. J.*

(A.)

In the Court of Claims for the United States, December Term, 1893 and 1894.

JOHNSON BLACKFEATHER, the Principal Chief of the Shawnee Tribe of Indians,
vs.
THE UNITED STATES and THE CHEROKEE NATION.

No. 16856.
General Jurisdiction.

Motion of the Petitioner for Amendments to the Findings of Facts Filed in the Above-entitled Cause on the 12th Day of June, 1893.

WASHINGTON, D. C., *February* —, 1894.

Now comes the petitioner, by Charles Brownell, his attorney, and moves this honorable court to allow and make amendments to the finding of facts filed in the above-entitled cause by the court on the 12th day of June, 1893, as follows:

52 1. On page 3 of the said findings, after the words "December 17, 1891," add the following: 738 of these Shawnees have received said *per capita* amount under the provisions of said acts of Congress.

This paragraph of this section when this requested amendment is added will appear and read as follows:

"Afterwards Congress, by *of* an act of October 19th, 1888 (25 Stat., 608), appropriated out of the funds of the Cherokee nation a sufficient amount of money to pay to these said Shawnees *per capita* the $15.50, which was paid to them December 17th, 1891. 738 of these Shawnees have received said *per capita* amount under the provisions of said acts of Congress."

2. On page 3 of the findings, in the section marked VI, but which should be V, in the fourth line from the beginning of this section, after the words "the following is determined," strike out the word "determined" and in place insert the word claimed; then add the words by the defendant The Cherokee Nation. This line will then read:

"The following is claimed by the defendant The Cherokee Nation as the population of the Cherokee nation (year 1890.")

Solicitor for the Shawnee claimants respectfully calls the court's attention to the wording and reading of the decree on page 6 of the accompanying decree and findings after the figures "$593,625," "that such a distribution shall be based on the agreed census of the native adopted citizens as ascertained and agreed upon, to wit, 26,771 being taken as the whole number of Cherokees of all descriptions and the said Shawnees being taken as 624 of said whole number."

53 No agreement or stipulation was ever made and entered into by the attorney and solicitor for this petitioner and these claimants for such a census number to be received as the bacis for distributing this money, and the court evidently has inadvertantly and unconsciously inserted this stipulation without looking for such a stipulation or an agreement from the Shawnee claimants. On the contrary, on pages 75 and 76, blue-pencil paging, of the printed Record will be found the reply of the Secretary of the Interior to a call made Jan. 15, 1892—see opposite page—showing at this time these Shawnee claimants had been enumerated and paid to the amount of 694 persons, and in a reply to a supplemental call made May the 8th, 1893, the Secretary shows that 44 and 7 more were added, making a total of 745 persons. This reply came in too late to be printed in the record of the case, but was with the files of the case, and the court's attention was directed to this reply. Now, it is not within the scope of presumption or logical reasoning that the solicitor for these Shawnees would assent to a reduction of numbers in their ranks when the documents regularly coming into this case shows 114 persons who are entitled to be enumerated more than the stated number purporting to be agreed to in this decree.

The honest number should be and appear in this decree as 738 persons, and for the proof and in support of this allegation the court is respectfully referred to the 75 and 76 pages of the printed Record and to the attached replies to this call, which *is* marked "A," which came to the files of this case too late to be printed.

54 Respectfully referring to the finding on page 3, which appears as follows:

"The sum paid out to the Cherokees by blood was $593,625. The total population being 26,771, the *per capita* of distribution to the rate Shawnees would be 22.17, amounting to $13,834.08."

In the fourth finding, on the same page, the *per capita* payment is found to be $15.95 and $13.70 which the Cherokees received out of these two amounts, which make the amount of $593,625. These two *per capita* amounts added make $29.65, an apparent unequal distribution of $7.48 *per capita*.

This discrimination does not suit these claimants, and they cannot understand this part of this decree and these findings compared with that part of the decree enjoining the defendants from ever after discriminating in the distribution of the public property of the Cherokee nation when the court presents on the face of the decree, in

comparison with the evidence, a discrimination in favor of the Cherokees of $7.48 *per capita*.

Respectfully submitted.

CHARLES BROWNELL,
Attorney for the Petitioner and Claimants.

Filed February 26th, 1894.

To law calendar.

WM. A. RICHARDSON,
Chief Justice.

Court of Claims.

JOHNSON BLACKFEATHER, the Principal Chief of the Shawnee Tribe of Indians,
v.
THE UNITED STATES and THE CHEROKEE NATION.
} No. 16856.

Order.

Motion of the *of the* plaintiff for amendments to findings and decree overruled.

Memorandum.

The amount found is the amount due. The *per capita* distribution to the Cherokees by blood—*i. e.*, 29.65—was in excess of the sum properly to be distributed *per capita* had that distribution been correctly and legally made.

BY THE COURT.

55 JOHNSON BLACKFEATHER, the Principal Chief of the Shawnees, Petitioner,
vs.
THE UNITED STATES and THE CHEROKEE NATION, Defendant.
} No. 16856. Gen. Jurisdiction.

JAN. 15TH, 1892.

Now comes the said petitioner, by Denver & Brownell, his attorneys, and moves this honorable court for a call upon the honorable Secretary of the Interior for papers relative to this claim, which papers are on file in the Indian Bureau, including the following papers, namely: An exemplified copy of the official report of Leo E. Bennett, U. S. Ind. ag't for Union agency, Muskogee, Ind. Ter., reporting the payment to the Cherokee Shawnees their *per capita* share of $75,000 appropriated by act of Congress, Oct. 19th, 1888 (25 Stats., p. 609), including the pay-roll of the said Shawnees, which said agent used and made at the time and for the said payment.

DENVER & BROWNELL,
Attorneys for Petitioners.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *March* 21, 1892.

John Randolph, Esq., ass't clerk of Court of Claims.

SIR: I have the honor to acknowledge receipt of call of Court of Claims dated January 15, 1892, for certified copies of certain papers (set forth in the rule accompanying said call) to be used as evidence in case of Johnson Blackfeather, principal chief of the Shawnee Indians, *v.* The United States, cause # 16856.

In reply I transmit herewith certified copies of the papers desired.

Very respectfully, JOHN W. NOBLE, *Secretary.*

Annuity Pay-roll.

Certificate of witnesses.

We, the undersigned, hereby certify, on honor, that we were present and witnessed the payment by Leo E. Bennett, United States Indian agent, on the respective dates mentioned in the foregoing pay-roll of the several sums to the individuals opposite whose names our signatures are affixed as witnesses, and that we saw said individuals sign the same, by writing their names or making their marks; and that the pages of said pay-roll are numbered from sixty (60) to ninety-seven (97), inclusive, and contain the names of six hundred and ninety-four (694) persons, numbered from one (1) to six hundred and ninety-four (694), inclusive; and we further declare our entire disinterestedness in this matter.

Dated December 17th, 1891.
HENRY F. A. ROGERS.
Dated December 17th, 1891.
his
JOHNSON x BLACKFEATHER.
mark.
Dated December 17th, 1891.
FRED. MORRIS.
Dated December 17th, 1891.
EMMA DUNCAN.
Dated December 17th, 1891.
IDA M. COLLINS.
Dated December 17th, 1891.
—— ——.

Witnessses.
Fred. Morris,
Witness.

Certificate of Interpreter.

I, Thomas Daugherty, interpreter, hereby certify that I was present and witnessed the payment by Leo E. Bennett, United States Indian agent, on the respective dates mentioned in the foregoing pay-roll of the several sums to the individuals who have receipted for the same; that I saw said individuals sign the same, by writing their names or making their marks; that I fully explained the nature of said payments to said individuals; that the pages of said

pay-roll are numbered from sixty (60) to ninety-seven (97), inclusive, and contain the names of six hundred and ninety-four (694) persons, numbered from one (1) to six hundred and ninety-four (694), inclusive.

Dated December 17th, 1891.

THOMAS DAUGHERTY, *Interpreter.*

56 *Certificate of Agent.*

I, Leo E. Bennett, United States Indian agent, hereby certify, on honor, that on the respective dates mentioned in the foregoing pay-roll I made payment of the several sums to the individuals who have receipted for the same; that the pages of said pay-roll are numbered from *one* sixty (*1*) to ninety-seven (97), inclusive, and contain the names of six hundred and ninety-four (694) persons, numbered from one (1) to six hundred and ninety-four (694), inclusive; and that the aggregate amount of said payments was nine thousand five hundred and forty-eight dollars ($9,548.00); (payment to Nos. 8, 9, 10, 17, 21, 26, 28, 101, 108, 120, 121, 125, 127, 139, 150, 178, 187, 192, 209, 222, 228, 236, 237, 248, 258, 259, 267, 268, 271, 272, 288, 289, 290, 291, 311, 329, 332, 360, 361, 362, 363, 364, 365, 367, 394, 404, 405, 414, 415, 416, 454, 458, 511, 556, 571, 573, 574, 578, 584, 588, 601, 604, 605, 609, 610, 617, 620, 624, 633, 644, 646, 649, 669, 672, 674, 690, 691, 692, a total of 78 shares, amounting to one thousand two hundred and nine dollars ($1,209.00) not having been made.)

Dated December 17, 1891.

LEO E. BENNETT, *Agent.*

In the Court of Claims.

JOHNSON BLACKFEATHER, the Principal Chief of the Shawnees, Petitioner,
vs.
THE UNITED STATES and THE CHEROKEE NATION, Defendant-.

No. 16856. Gen. Jurisdiction.

JAN. 15TH, 1892.

Now comes the said petitioner, by Denver & Brownell, his attorney-, and moves this honorable court for a call upon the honorable Secretary of the Interior for papers relative to this claim, which papers are on file in the Indian Bureau, including the following papers, namely: An exemplified copy of the official report of Leo E. Bennett, U. S. Ind. ag't for Union agency, Muskogee, Ind. Ter., reporting the payment to the Cherokee Shawnees their *per capita* share of $75,000 appropriated by act of Congress Oct. 19th, 1888 (25 Stat., p. 609), including the pay-roll of the said Shawnees, which said agent used and made at the time and for the said payment.

DENVER & BROWNELL,
Attorney- for Petitioner.

Allowed.

W. A. R., *Ch. J.*

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *February* 8, 1892.

The chief clerk Court of Claims.

SIR: I have the honor to acknowledge the receipt of your communication of 15th ultimo transmitting call of the court for an exemplified copy of the official report of Agent Leo E. Bennett,
56½ Union agency, Indian Territory, as to the payment to the Cherokee Shawnees of their *per capita* share of $75,000 appropriated by act of October 19, 1888.

In response I transmit copy of a communication of 6th instant from the Commissioner of Indian Affairs, to whom the matter was referred.

In view of the statements made in said communication I have to request to be informed whether a certified copy of the final or certificate sheet of the roll will be sufficient answer to the call of the court.

Very respectfully, JOHN W. NOBLE, *Secretary.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *February* 6, 1892.

The honorable the Secretary of the Interior.

SIR: I have the honor to acknowledge the receipt, by department reference of 18th ultimo, of a call from the Court of Claims for an exempli-ed copy of the official report of Leo E. Bennett, U. S. Indian agent for Union agency, I. T., as to the payment to the Cherokee Shawnees their *per capita* share of $75,000, appropriated by act of October 19th, 1888, 25 Stats., p. 609.

The pay-roll referred to is quite voluminous, containing nearly eight hundred names, and covering about fifty pages of large annuity roll paper.

As to make a copy of this roll would require considerable time and clerical service, which cannot well be spared from the current work of this office, I respectfully recommend that inquiry be made from the court if an exemplified copy of the final or certificate sheet of the roll would not be sufficient, which final sheet contains the certificates of the persons who witnessed the payment, of the interpreter, and of the agent, and on it is set forth the number of persons and the amount paid, and the number of persons and the amount remaining unpaid.

Very respectfully, your obedient servant,

T. J. MORGAN,
Commissioner.

57 In the Court of Claims.

WASHINGTON, D. C., *May 8th*, 1893.

JOHNSON BLACKFEATHER, the Principal Chief of the Shawnees, Petitioner,
vs.
THE UNITED STATES and THE CHEROKEE NATION, Defendant-.

No. 16856.
General Jurisdiction.

Now comes the said petitioner, by Charles Brownell, his attorney, and moves this honorable court for a call upon the honorable Secretary of the Interior for papers and information relative to this claim, and which papers and information are on file in the Bureau of Indian Affairs, and including the following papers and information, namely:

An exemplified statement which will inform the Court the number of Shawnee Indians who have been added to the "Wallace rolls" since the reply made by the Secretary dated March 21, 1892, and the Commissioner of Indian Affairs to the Secretary, February 6th, 1892. At that time the number reported was 694 persons.

C. BROWNELL,
Attorney for the Petitioner.

Allowed.
WM. A. RICHARDSON,
Chief Justice.

Filed May 8, 1893.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *May* 18, 1893.

The chief clerk Court of Claims.

58 SIR: I acknowledge the receipt of your communication of the 8th instant calling for paper in cause 16856, Johnson Blackfeather, etc., *vs.* The United States.

In reply thereto I transmit herewith copy of a communication of the 16th instant from the Commissioner of Indian Affairs on the subject, to whom the matter was referred.

Very respectfully,

J. H. LINES,
Acting Secretary.

3639, Ind. Div., '93. 4 enclosures. Filed May 20th, 1893, Court of Claims.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *May 16th*, 1893.

The honorable the Secretary of the Interior.

SIR: I have the honor to acknowledge the receipt by department reference for report of a call from the Court of Claims under date of the 8th instant to furnish for use as evidence in the trial of Johnson Blackfeather, etc., *vs.* The United States, case No. 16856, then pending in said court, any information or paper supposed to be on

file in the department set forth in the petition of Charles Brownell for an exemplified statement which will inform the court of the number of Shawnee Indians who have been added to the "Wallace roll" since the reply made to the Secretary of the Interior March 21, 1892, and by the Commissioner of Indian Affairs to the said Secretary February 6, 1892, when the number was reported to be 694 persons.

59 In compliance with said reference, I have the honor to report that the original Wallace roll contained the names of 611 living persons and 98 deceased persons, in all 709 persons as entitled to participate in the distribution of the $75,000 fund. This roll, however, was not submitted to the Secretary of the Interior for his approval, but a schedule of names was prepared in this office made up from the said Wallace roll upon the evedence accompanying said roll and from evidence presented to this office after Mr. Wallace submitted his report. That sc-edule contained 694 names and was approved by Secretary Noble September 26, 1891 (certified copy of approval herewith). Subsequently further evidence in behalf of 44 Shawnees was submitted to this office showing that they, too, were entitled to participate in said fund. A supplemental schedule comprising these 44 names was approved by Secretary Noble May 23, 1892 (certified copy of approval herewith). These two schedules, one of 694 names and the other of 44 names, making 738 persons, constitute the total number of names that have been approved by the Secretary of the Interior and are the only Shawnees Agent Bennett has been authorized to make payment to out — said fund of $75,000. Mr. Brownell misconstrues the language of the certificate of Agent Bennett in his explanation submitted with his motion for the aforesaid call when he asserts that Agent Bennett "made the payment of the funds authorized to 694 persons, and on the following page he retained 78 shares for the further action of the department. * * * This number, added to the 694 persons, makes 772 persons enrolled," &c.

Agent Bennett certifies to the fact that he made payment
60 to those of the 694 persons on schedule who had receipted to him therefor (being 616 persons), leaving 78 persons (giving their number) unpaid.

On the 19th of November last Agent Bennett submitted the certificat- of J. A. Scales, executive secretary of the Cherokee nation, showing that Francis Edgar Chouteau had by an act of the Cherokee council, approved December 6th, 1890, been acknowledged a member of *of* the nation as a Cherokee Shawnee (certified copy herewith). On an appeal from the decision of this office Secretary Noble, on the 25 of January, 1893, decided that John Pecon, Betsey Effert, *alias* Abbott, and Jacob Brar were entitled to be enrolled and authorized this office to place their names on the rolls of the Cherokee Shawnees (copy of the authority herewith).

Upon the principle established by the department in the above decisions that where evidence is furnished that the claimants or their ancestors went into the Cherokee nation within two years after the approval of the agreement made between these tribes and re-

mained there permanently since that time and had broken out farms and made improvements of considerable value, &c., but failed to register as provided in the agreement they were entitled to enrollment, I have to report that the application in favor of James Cæsar, George Kahway, and Eliza Kahway, the latter two having died in 1884, for enrollment, were forwarded to this office April 12, 1893, and their names will be placed on the next supplementary schedule, which will be submitted to the Secretary of the Interior for his approval, which, if approved, will make seven names more to be added to the already approved schedule, making in all a grand total — 745 names.

The papers submitted are herewith respectfully returned.

61 Very respectfully,

Your obedient servant,

F. C. ARMSTRONG,
Acting Commissioner.

Filed in the Court of Claims May 20th, 1893.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *February* 17, 1894.

The chief clerk Court of Claims.

SIR: In connection with department letter of May 18th, 1893, transmitting copy of a report of the Commissioner of Indian Affairs of May 16, 1893, and accompanying papers, for use as evidence in the trial of Johnson Blackfeather, etc., *vs.* The United States, case No. 16856, I have the honor to transmit herewith copy of the communication, dated 16th instant, from the Commissioner of Indian Affairs, and accompanying statement and papers furnished at the request of Mr. Charles Brownell, attorney for the Cherokee Shawnee Indians, and giving the latest information in the possession of the Indian office as to the correct number of these Indians.

Very respectfully,

HOKE SMITH, *Secretary.*

1287. Ind. Div. '94. 3 enclos.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
WASHINGTON, *February* 16, 1894.

62 The honorable the Secretary of the Interior.

SIR: I have the honor to submit the following statement and papers, upon the informal request of Mr. Charles Brownell, attorney for the Cherokee Shawnee Indians, as a supplemental report to office report of May 16, 1893, on a call from the Court of Claims under date of May 8, 1893, to furnish for use as evidence in the trial of Johnson Blackfeather, etc., *vs.* The United States, case No. 16856, then pending in said court, any information or papers supposed to be on file in the department, set forth in the petition of Charles Brownell, for an exemplified statement which will inform the court of the number of Shawnee Indians who have been added to

the "Wallace rolls" since the reply made to the Secretary of the Interior March 21, 1892, and by the Commissioner of Indian Affairs to the said Secretary February 6, 1892, when the number was reported to be 694 persons, viz:

The first schedule contained.....	694	names.
The second " "	44	"
The third " " .....(copy herewith)	9	"
	747	

from which first and second schedules the Secretary of the Interior, by letter dated August 9, 1893 (copy herewith), directed the following names, ten in number, to be stricken therefrom, viz: * * *

These names stricken from the rolls reduces the total aggregate of Cherokee Shawnees to the number of 737, and this supplemental report is made to furnish the Court of Claims the latest information in possession of this office as to the correct number.

Very respectfully,
Your obedient servant,

D. M. BROWNING,
Commissioner.

Filed in the Court of Claims February 24, 1894.

63 In the Court of Claims.

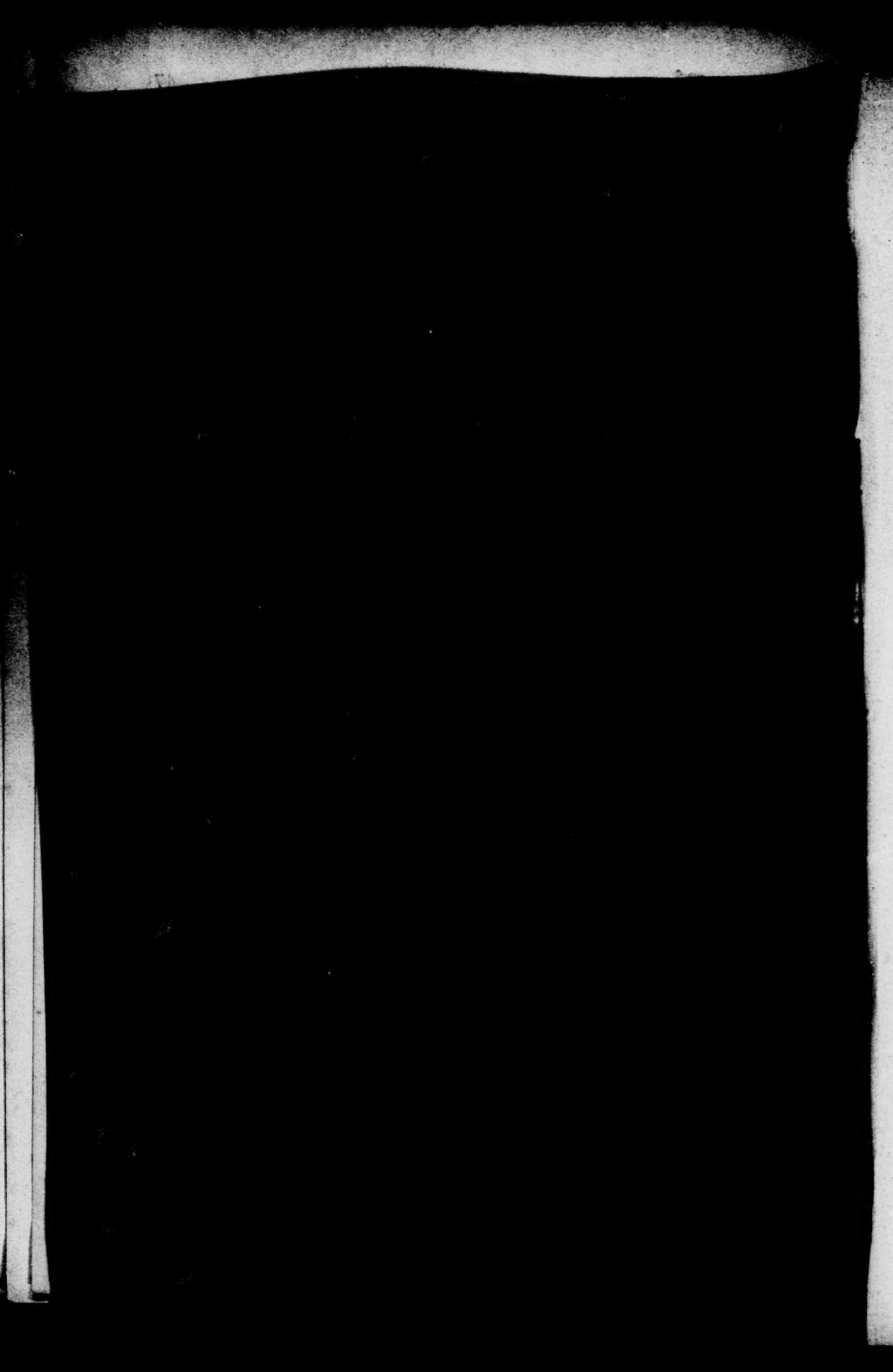
JOHNSON BLACKFEATHER, the Principal Chief of the Shawnee Tribe of Indians,
vs.
THE UNITED STATES and THE CHEROKEE NATION. } No. 16586.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, the decree of the court, the application of the claimant for and the allowance of appeal to the Supreme Court of the United States.

Seal Court of Claims. In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 23d day of March, 1894.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: Case No. 15,543. Court of Claims. Term No., 671. The United States and The Cherokee Nation, appellants, *vs*, Johnson Blackfeather, principal chief of the Shawnee Indians. Filed March 26, 1894.



In the Supreme Court of the United States.

OCTOBER TERM, 1894.

THE UNITED STATES AND THE CHEROKEE NATION, appellants,
v.
JOHNSON BLACKFEATHER, PRINCIPAL CHIEF OF THE SHAWNEE INDIANS. } No. 671.

BRIEF FOR THE GOVERNMENT.

This was a suit brought by the appellees against the Cherokee Nation, joining the United States as a defendant, to establish the rights of certain adopted citizens in the tribal funds of that nation, by virtue of the treaty of adoption, jurisdiction wherein was entertained by the Court of Claims in pursuance of two acts of Congress, one approved October 1, 1890, entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee Nation, and for other purposes;" the other, approved July 6, 1892, and entitled "An act supplementary and amendatory to an act entitled 'An act to refer to the

Court of Claims certain claims of the Shawnee and Delaware Indians and freedmen of the 'Cherokee Nation, and for other purposes,' approved October first, eighteen hundred and ninety."

The Cherokee Nation preferred to retain and be represented by counsel of their own selection, namely, Messrs. Maxwell and Chase, who have conducted the defense of the action, and whom the Attorney-General has, therefore, deemed wise to leave in full charge of that defense.

In this case the Government of the United States, if interested at all, is interested only as a stakeholder, for the reason that the funds in its hands may be made the source from which is drawn any payment decreed to the claimants. The Government has sought not to embarrass or inconvenience either party in the conduct of the litigation or the presentation of their rights, and joined in the appeal to this court at the request and in concert with the attorneys for the Cherokee Nation, in order that all questions properly raised by the record might be considered here.

It is, therefore, urged on behalf of the Government that no judgment entered herein should be a charge against the United States and that no costs should be imposed upon the public Treasury.

Respectfully submitted.

J. E. DODGE,
Assistant Attorney-General.

O



IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

THE UNITED STATES AND THE CHEROKEE NATION, *Appellants*,

vs.

JOHNSON BLACKFEATHER, *Principal Chief of the Shawnee Tribe of Indians*, *Appellee.*

No. 671.

Brief on Behalf of the Appellant, the Cherokee Nation.

Counsel for appellants, the Cherokee Nation, submit this case on the brief filed in the case of the United States and the Cherokee Nation, appellants, *vs.* Charles Journeycake, etc., No. 673, submitted herewith, with the following suggestions:

The cases of the Delawares and Shawnees are identical in principle, both having "incorporated" under the provisions of the fifteenth article of the Cherokee treaty of 1866, the Shawnee contract providing that after the payment of the amount agreed upon, which amounted to $150,000.00, (see finding of fact No. 111) they should

be "received into the country of the said Cherokees upon unoccupied lands east of 96°, and that the said Shawnees shall be incorporated into and ever after remain a part of the Cherokee Nation on equal terms in every respect and with all the privileges and immunities of native citizens of said Cherokee Nation."

There were 772 Shawnees so incorporated, (see finding of fact No. 11) making a *per capita* payment of $194.00 and a fraction.

The Shawnees came in under the first subdivision of the fifteenth article of the treaty of 1866, purchasing no land, and under no obligation to pay anything on account of "the probable proceeds of the lands * * authorized to be ceded or sold," but only an amount equal to the pro rata value of the national fund, and this was what they did.

This matter is not difficult to follow to a just conclusion on a proper understanding of the situation. In the Cherokee Nation there is no system of taxation. The government is maintained by the interest on its invested funds, commonly designated "national fund." This is the only source of revenue. These new citizens coming in would pay no tax toward the support of the government, so they were required to enlarge this interest-producing fund, in proportion to their numbers. This is right and fair, and an extremely simple proposition. If this gave them an interest, equal with the Cherokees, in all the lands of the latter, what on earth was the necessity for the Delawares paying $157,600.00 for 160 acres each, when they would get that and more, too, without paying a cent? As long as the lands were unsold or otherwise undisposed of, the adopted citizens had the right to occupy as much as they could use, whether more or less than 160 acres. If on a division of the lands in severalty, or a sale, they were to take equally with the native Cherokees, then the Delawares

simply paid $157,600.00 *for nothing*, as they took nothing by it, and are not now any better off than the Shawnees, who did not purchase any land, as under their contentions they all took equally with Cherokees and with each other. This is certainly a *reductio ad absurdum*. The fact is the Delawares bought 160 acres of land for each man, woman and child, because, *except by such purchase, they understood perfectly well they would get no land.* The Shawnees did not make such purchase, and did not get any land or interest in any, but only a use like other members of the community, so long as the lands remained in common. This is further shown by the fact that the *per capita* payment of the Shawnees was a little less than two-fifths of the amount required by the Cherokee laws to be paid by those individuals adopted into the nation who were to become participants in the "lands and vested wealth" thereof.

CHARLES A. MAXWELL,
GEORGE S. CHASE,
Attorneys for Appellants,
The Cherokee Nation.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 671.

UNITED STATES AND THE CHEROKEE NATION, APPELLANTS,

vs.

JOHNSON BLACKFEATHER, PRINCIPAL CHIEF OF THE SHAWNEE INDIANS.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLEE.

STATEMENT.

This is an appeal from a decree and judgment of the Court of Claims.

This action is brought under the act of Congress approved October 1, 1890, entitled "An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee nation, and for other purposes" (26 Stats., 636; Rec., pp. 16, 17). Prior to the year 1869 these Shawnees were permanently located and

residing on their lands in Johnson and Douglas counties, in the State of Kansas. They were civilized, advanced in knowledge and the problems of self-support and maintenance, honest, industrious, and thrifty, occupying and cultivating their own farms, many carrying on business in the towns and cities, and wealthy in their own individual possessions, competent to conduct and manage their own affairs, loyal and true to the Government during the late war of the Rebellion.

As a tribe they possessed a fund ample for the maintenance of their schools by a permanent annuity fund of five thousand dollars annually. (Finding I; Rec., p. 3.)

In the year 1869 these Shawnees were induced to enter into articles of agreement with the appellant The Cherokee Nation (Finding I; Rec., pp. 2, 3, 4), which articles of agreement were authorized and provided for by article 15 of the Cherokee treaty of July 19, 1866. (14 Stats., 799; Rec., p. 1.)

In these articles of agreement they granted to the defendant The Cherokee Nation forever this perpetual annuity of five thousand dollars, and, in addition, fifty thousand dollars of their money, derived from the sale of their surplus Kansas lands, in exchange for and to purchase a permanent and peaceable home in the Cherokee nation for themselves and their descendants, under the protection and approval of the President of the United States, as provided in said article of treaty of 1866.

The estimated value of this cession or grant of these tribal funds to this defendant, The Cherokee Nation, by these contracting parties was one hundred and ninety-five dollars for each Shawnee Indian who should avail himself of the privileges of this agreement. The Cherokee nation has received from these Shawnees $150,000. (Finding III; Rec., p. 33.)

The only proviso found in this agreement is—

"That all of the said Shawnees who shall elect to avail themselves of the provisions of this agreement shall register their names and permanently locate in the Cherokee country, as herein provided, within two years from the date hereof; otherwise they shall forfeit all rights under this agreement."

And that all of these Shawnees—

"Shall be incorporated into and ever after remain a part of the Cherokee nation on equal terms in every respect and with all the privileges and immunities of native citizens of the Cherokee nation." (Finding I; Rec., p. 3.)

It is found that 772 Shawnee Indians did avail themselves of the provisions of this agreement, and they or their descendants are now living and permanently located on the defendant's lands—the Cherokee Nation—east of 96°. (Finding II; Rec., p. 33.)

These Shawnees were received and recognized by the Cherokee nation on the unoccupied lands east of 96°, and were incorporated into the said Cherokee nation on equal terms. (Finding IV; Rec., pp. 33, 35.)

The Cherokee nation received from the United States the sum of $300,000, which amount was paid out by the Cherokee nation *per capita* to all Cherokee citizens share and share alike, and these Shawnees were included; the *per capita* payment was $16.55. (Finding IV.)

Under the act of Congress approved March 3, 1883, the Cherokee nation received from the United States $300,000 additional, of which amount they paid out $274,500 *per capita* to citizens of Cherokee blood only. These Shawnees were by the Cherokee nation excluded from receiving any *per capita* share of said money; the *per capita* amount of this payment was $15.50. (Finding IV; Rec., p. 34.)

Afterwards Congress, by act of October 19, 1888, appropriated out of funds of the Cherokee nation a sufficient amount of money to pay these said Shawnees *per capita* the

$15.50, which was paid to them December 17, 1891 (Finding IV; Rec., pp. 5, 6, 7); (737 persons who are the survivors of the original number, 772 persons who registered and permanently settled in the said Cherokee nation under the fourth article of the treaty of 1866 and the said article of agreement (finding II), have received this *per capita* payment out of the money so appropriated by Congress). (Rec., pp. 44, 45, 46, 47.)

Afterwards the Cherokee nation received from the Cherokee Strip Live Stock Association for grazing, leasing, and occupying the appellant's land west of 96° $5,000,000. Out of this the Cherokee nation paid *per capita* to Cherokees (by blood only) $295,000. This *per capita* payment was $15.95. These Shawnees were by the appellant excluded from receiving any share of said money, and these Shawnees have never received any part or portion of this last above money so received and paid out by this appellant. (Finding IV; Rec., pp. 7, 8, 9, 10, 11, 12, 13.)

Afterwards The Cherokee Nation, the appellant, received from the said Cherokee Strip Live Stock Association for the leasing and grazing of the lands aforesaid $300,000, and out of this amount the Cherokee nation paid *per capita* the sum of $298,625 to the citizens of Cherokee blood only. This *per capita* payment was $13.70. (Finding IV; Rec., pp. 13, 14.)

These Shawnees have not received from these appellants any portion or part of the said above amount.

December 19, 1891, a commission agreed with the Cherokee nation for the sale and cessation of certain lands to the United States for the sum of $8,595,736.12 (sec. 14, act —, 25 Stats., 1105) finding VI. (Rec., p. 15.)

And it is proper to state here that these lands so sold are the same lands that are referred to in finding IV (Rec., pp. 2–13, inclusive) as lands leased and occupied for grazing purposes by the Cherokee Strip Live Stock Association on which the said association had paid to the appellant the several sums of $500,000 and $300,000, and that section 10

of the act passed and approved March 3, 1893 (27 Stats., 641), is as follows:

"That of the money hereby appropriated a sufficient amount to pay the Delawares and Shawnees their *pro rata* share in the proceeds of said outlet shall remain in the Treasury of the United States until the status of said Delaware and Shawnee Indians shall be determined by the courts of the United States before which their suits are now pending."

And that by the report made by the Secretary of the Interior on ——— —, 189–, the sum of $1,666,000 of this money is retained under the provisions of this act for the purposes therein provided.

In finding VI the Court states the following:

Cherokees by blood	21,232
Shawnees	624

In finding II the Court states that 772 Shawnee Indians registered their names and permanently settled in the said Cherokee nation. The Court will see that this registration was under the provision of the article of agreement (Rec., p. 33), as set out in finding I. Under the provisions of the act of Congress passed and approved March 2, 1889 (25 Stats., 994) Congress provided for the Secretary of the Interior to take the census of these Shawnees for the purpose of paying to these Shawnees their proportionate share of the $75,000 appropriated by the act of Congress of October 19, 1888, entitled "An act to secure to the freedmen and others their proportion of certain proceeds of land under the act of March 3, 1883" (25 Stats., 609; Rec., p. 6), and that the result of this census shows that there are 737 persons survivors of the 772 Shawnees who registered their names under the provisions of the aforesaid article of agreement. (Rec., p. 47.)

It is submitted by counsel for the appellee that this finding of this number of these Shawnees, namely, 624 persons

only, is a misapprehension of the honorable Court of Claims, and, if not corrected so as to make this number 737 persons, great injustice and permanent injury will be done to 113 persons who are honestly and rightfully entitled to be incorporated into this Cherokee nation under the provisions of this article of this agreement and article 15 of the Cherokee treaty of July 19, 1866. (Rec., pp. 1 and 2.)

Again, the Court of Claims presents in finding VI the following:

"The sum paid out to the Cherokees by blood was $593,625." * * *

This aggregate amount is made up from the addition of the amounts of $295,000 received from the Cherokee Live Stock Association for grazing and leasing lands of the Cherokee nation west of 96° and paid out *per capita* to Cherokees by blood only, and which payment was $15.95 *per capita* (and from which these Shawnees were excluded from receiving any share), and the additional sum of $298,625 received by the Cherokee nation from the same association for the same purpose, and out of which the Cherokee nation paid out *per capita* to Cherokees by blood only the sum of $13.70, and these Shawnees were excluded from receiving any share in the said sum of money. (Rec., p. 34.)

The honorable Court, in this same finding, states the following:

"The total population being 26,771, the *per capita* of distribution to the rate Shawnees would be $22.17, amounting in all to $13,834.08."

Counsel for the appellee shows to the Court that by the process of addition $15.95 added to $13.70 makes a total of $29.65 *per capita* that these Cherokees by blood have received from the distribution of this money, received from

time to time by this appellant and distributed, and have excluded these Shawnees, in violation of article 15 of the Cherokee treaty of July 19, 1886 (Rec., pp. 1 and 2), and the article of agreement made by and between these Shawnees and this appellant on the 9th day of June, 1869. (Finding I.)

Counsel for the appellee directs this Court's attention to the second section of the act of Congress referring these claims to the Court of Claims and appeal to this Court, which provides as follows (Rec., p. 16):

"That the said Shawnees * * * shall have a right * * * to begin and prosecute a suit or suits against the Cherokee nation and the United States Government to recover from the Cherokee nation all moneys due either in law or equity and unpaid to the said Shawnees, * * * which the Cherokee nation may have before paid out or may hereafter pay *per capita* in the Cherokee nation, and which was or may be refused to or neglected to be paid to the said Shawnees * * * by the Cherokee nation out of any money or funds which have or may be paid into the treasury of or in any way come or may come into the possession of the Cherokee nation, Indian Territory, derived from the sale, leasing, or rent for grazing purposes on Cherokee lands west of 96° west longitude, and which have been or may be appropriated and directed to be paid out *per capita* by the acts passed by the Cherokee council, and for all moneys, lands, and rights which shall appear to be due to the said Shawnees * * * under the provisions of the aforesaid articles of the treaty and articles of agreement."

Section 1 of this act provides as follows:

"That full jurisdiction is hereby conferred upon the Court of Claims, subject to an appeal to the Supreme Court of the United States, as in other cases, to hear and determine what are the just rights in law or in equity of the Shawnee Indians who are settled and incorporated into the Cherokee nation, Indian Territory, east of 96° west longitude." (Under the provisions of article 15 of the Cherokee treaty of 1866 and said article of agreement, finding 1.)

The provision in the article of agreement as to the equality of these Shawnees is as follows:

"And that the said Shawnees shall be incorporated into and ever and after remain a part of the Cherokee nation on equal terms in every respect and with all the privileges and immunities of native citizens of said Cherokee nation." (Finding 1, Rec., pp. 32 and 33, side p. 45.)

On this point article 15 of the said Cherokee treaty of 1866 provides as follows:

"The United States may settle any civilized Indians friendly with the Cherokees and adjacent tribes within the Cherokee country, on unoccupied lands east of 96°, on such terms as may be agreed upon by any such tribe and the Cherokees, subject to the approval of the President of the United States, which shall be consistent with the following provisions, viz: Should any such tribe or band of Indians settling in said country abandon their tribal organization, there being first paid into the Cherokee national fund a sum of money which shall sustain the same proportion to the then existing national fund that the number of Indians sustained to the whole number of Cherokees then residing in the Cherokee country, they shall be incorporated into and ever after remain a part of the Cherokee nation on equal terms in every respect with native citizens."

By finding III the Cherokee nation has received from the said Shawnees under the said articles of agreement the sum of $150,000. The estimated value made by the Cherokee national council of the amount of money stipulated to be paid under this agreement was $195.00 for each one of said Shawnees.

Counsel calls this Court's attention to the closing paragraph of finding I, which appears as follows:

"Said articles of agreement were approved by the Secretary of the Interior and President June 9, 1869."

The difference between $22.17 and $29.65 is $7.48 *per capita*, and the difference between 624 persons as found by the

court and 737 persons is 113 persons, which seem to be entitled to be recognized by this Court under the provisions of this act of Congress and these articles of this treaty and agreement, and that instead of $13,834.08 this judgment should be $21,852.05.

The honorable Court of Claims has misapprehended the proof in this case and has taken the general statement of the census of the Cherokee people under the general census act of 1890 instead of taking the evidence contained in its record in this case and the provisions and directions of the act of Congress of March 2, 1889 (25 Stats., 994), which gave to the Secretary of the Interior full power to make a roll from which these Shawnees could be paid their *per capita* share of the money appropriated by Congress out of the Cherokees' money October 19, 1888 (25 Stats., 609), which claim is a part of this suit. (Rec., p. 6.)

The prayer of the petitioner's original petition, filed December 10, 1890, among other things presents to the Court the following (Rec., p. 18, side p. 25):

"That the Court will finally decide and decree that the Shawnee Indians are a part of the Cherokee nation, and that they shall ever after remain as such on equal terms in every respect and with all the privileges and immunities of a native citizen of said Cherokee nation, and that they shall hence have and receive from the Cherokee nation and the United States Government each their equal share and benefits in the distribution and proceeds in all lands and common property of and belonging to the Cherokee nation and in the leasing, sale, cession, and disposal of all lands to the United States or in any way may be ceded or sold or disposed of belonging to or possessed by the Cherokee nation west of 96° west longitude, Cherokee nation, Indian Territory."

Ten per cent. interest is claimed on this aggregate amount of $21,852.05 from May 18, 1883, at which time the Cherokee national council passed and approved the act excluding and defaulting these Shawnees from these several payments

up to and including the time to May 18, 1895, making a period of twelve years on this said sum of $21,852.05; also the costs and charges made in this suit. (Rec., pp. 7, 8, and 9; finding IV, Rec., p. 34.)

This claim is made by the appellee on the acknowledged principle and rule of law applied in enforcing specific performance of a contract, which this suit is in the nature of. This is regarded by the courts as furnishing an adequate remedy. (1 Maddock Ch. Pr., 295; 2 Story Ch., sec. 717; 1 Sim. & S. Ch., 607; 1 P. Will. Ch., 570.)

These Shawnees resisted and protested against these unlawful and unauthorized acts of the Cheroke nation excluding and defrauding these Shawnees from time to time from participating *per capita* in these said several payments of money here found to be due to these Shawnees, and these Shawnees petitioned for redress to the Cherokee authorities in power and afterward to the United States authorities in charge of Indian affairs, but without securing any relief, as will fully appear. Reference is here made to Senate Ex. Doc. No. 86, Forty-eighth Congress, first session; and as a final result these Shawnees are compelled to litigate this question in these Courts under the provisions of the act of Congress referring this claim to the Court of Claims, with appeal to this Court, as therein provided. (Rec., pp. 16, 17.)

The defense which this appellee, The Cherokee Nation, seems to set up in justification of these acts complained of by this appellee is that the said Cherokee nation under the provisions of section 20 of article 3 of the constitution of the Cherokee nation, which is as follows:

"All acknowledged treaties shall be the supreme law of the land, and the national council shall have the sole power of deciding on the construction of all treaty stipulations." (Sec. 20, p. 16, Compiled Laws of the Cherokee Nation, 1881.)

Section 17, page 15, of the same volume of their constitution is as follows:

"No retrospective law nor any law impairing the obligation of contracts shall be passed."

This is in direct contradiction to the provisions of article 5 of the treaty made with the United States and the Cherokee nation December 29, 1835 (7 Stats., 478), which is as follows:

"The United States covenant and agree that the lands ceded to the Cherokee nation in the foregoing articles shall in no future time without their consent be included in the territorial limits or jurisdiction of any State or Territory, but they will secure to the Cherokee nation the right, by their national councils, to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country belonging to their own people or such persons as have connected themselves with them: *Provided always*, That they shall not be inconsistent with the Constitution of the United States and such acts of Congress as have been or may be passed regulating trade and intercourse with the Indians." * * *

Again, the twelfth article of the treaty of July 19, 1866 (14 Stats., 799):

* * * "All laws enacted by said council shall take effect at such times as may therein be provided unless suspended by direction of the President of the United States. No law shall be enacted inconsistent with the Constitution of the United States or laws of Congress or existing treaty stipulations with the United States." * * *

May 18, 1883, the Cherokee national council passed "An act providing for the payment of balance due on the lands west of 96° *per capita*:" * * *

"*Be it further enacted*, That as soon as advised by the proper authorities that the funds are ready it shall be the duty of the treasurer to make requisition for the same. On receiving the same (said funds) it shall be the duty to pay the same out *per capita* to citizens by Cherokee blood according to the census rolls."

"*Be it further enacted*, That the treasurer shall make the payments at Tahlequah, Vinita, Fort Gibson, and Webber's Falls." (Laws and Joint Resolutions of the Cherokee Nation, years 1881, 1882, and 1883, pp. 139, 140.)

Again, the said Cherokee national council passed and approved an act April 27, 1886. (Laws and Joint Resolutions of the Cherokee Nation, 1884, 1885, and 1886, pp. 38, 39, 40, 41; Rec., pp. 13, 14)

NOTE TO THE COURT.—There appears on page 14 of the Record the following: "Approved April 27, 1666." This should appear as, "Approved April 27, 1886."

Again, on November 25, 1890, the Cherokee nation passed an act providing for the distribution *per capita* of the $295,000, as presented in finding IV (Laws and Joint Resolutions of the Cherokee Nation, 1884, 1885, and 1886, p. 33; Rec., pp. 26, 27, Exhibit C). By the provisions of all of these said acts of the Cherokee national council these Shawnees are wrongfully excluded from participation of the moneys authorized to be paid out under the provisions of said acts.

ARGUMENT.

The Court of Claims, in the decree filed June 12, 1893, which appears in this record, orders as follows:

"It is ordered, adjudged, and decreed that so much of the acts of the Cherokee national council of May 18, 1883, and November 25, 1890, as restricts the distribution of funds which were derived from the public domain to citizens of the nation by blood be held and deemed contrary to and in derogation of the constitution of the Cherokee nation, and that the said Cherokee nation or its trustees, the United States, account for, render, and pay to the said Shawnees, out of any funds of the said nation in its national treasury or in the custody of the United States, as trustees, not specifically appropriated by law to other purposes, or out of funds

that may hereafter come to the possession of the said trustees, belonging to the Cherokee nation, a sum equal to the aggregate amount which the Shawnees would have received if the before-mentioned unconstitutional restrictions in said statutes had not existed." (Rec., p. 35.)

This refers to finding IV of the $15.95 *per capita* which was paid out by the appellant The Cherokee Nation by blood only of the $295,000, which was a part of the $500,000 received by the appellant The Cherokee Nation from the Cherokee Strip Live Stock Association for grazing, leasing, and occupying their lands west of 96°.

And the $13.70 *per capita* paid out by the Cherokee nation *per capita* of the sum of $298,625, which was a part of the $300,000 afterwards received by the Cherokee nation from the said association for grazing and leasing lands west of 96° and paid to the Cherokees by blood only. (Rec., p. 34.)

These two *per capita* amounts added make $29.65 *per capita*, which, if paid to these Shawnees, will make them equal with the Cherokees in these payments and the aggregate amount will be $21,852.45. This will make the aggregate amount equal, as contemplated and ordered by this decree and the aforesaid article 15 of the treaty of 1866 and article of agreement. (Finding I.)

It will be observed by the Court that it is requisite for the Court to construe and interpret the 15th article of the treaty of 1866, the United States with the Cherokees, and the article of agreement as set out in full in finding I. This article is set out in full, Record, pp. 1 and 2.

Counsel herewith submits, as a proposition in law governing this part of this case, that treaties of every kind, when made by the competent authority, are as obligatory upon nations as private contracts are binding on individuals, and they are to receive a fair and liberal interpretation according to the intention of the contracting parties and to be kept with the most scrupulous good faith. Their meaning is to be ascertained by the same rules of construction and course

of reasoning which we apply to the interpretation of private contracts.

If the treaty should in fact be violated by one of the contracting parties, either by proceedings incompatible with the particular nature of the treaty or by an intentional breach of any of its articles, it rests alone with the injured party to pronounce it broken. The treaty, in such a case, is not absolutely void but voidable at the election of the injured party. If he chooses not to come to a rupture the treaty remains obligatory. He may waive or remit the infraction committed or he may demand a just satisfaction (1st Kent, *175). And if the legislative and executive branches of the Government have given and asserted a construction to a treaty courts of justice will not set up or sustain a different construction. (Foster *vs.* Neilson, 2 Peters' U. S. Rep., 253.)

The violation of any one article of a treaty is a violation of the whole treaty, for all the articles are dependent on each other and one is to be deemed a condition of the other, and a violation of one single article overthrows the whole treaty if the injured party elects so to consider it.

Counsel presents the above proposition as applicable in this case.

First. The action taken by the executive branch of the Government as presented in Senate Executive Document 86, Forty-eighth Congress, first session, shows to the court how the executive branch of the Government construes this article 15 of the treaty of 1866, and the article of agreement made by these Shawnees and the appellant, the Cherokee Nation.

Second. On pages 608 and 609 of the Twenty-fifth United States Statutes at Large will be found the act of Congress, passed and approved October 19, 1888, to secure to the Cherokee freedmen and others (including these Shawnees) their proportion of the proceeds of the lands belonging to this appellant, the Cherokee Nation, west of 96°. The preamble to and this act is a construction of this treaty and this article

of agreement by the legislative branch of this Government, bringing this case forcefully within the rule of law expressed by the Court in the case of Foster *vs.* Neilson, 2 Peters, 253.

It is again and further submitted by counsel that all the acts of the Cherokee national council here presented are in violation of the Constitution of the United States, as they impair the obligations of these contracts, and that they are in direct violation of the treaty stipulations and the articles of agreement made under the 15th article of the Cherokee treaty of July 19, 1866.

It is respectfully submitted that the title and interests these Shawnees have to these lands and the public funds of the appellant, the Cherokee Nation, under the provisions of the aforesaid article 15 of the Cherokee treaty of July 19, 1866, and the aforesaid article of agreement, made by and between the said appellant, the Cherokee Nation, and this appellee, be declared and quieted as against this appellant, the Cherokee Nation, and that the decree and judgment of the Court of Claims be corrected in the manner and amount as shown herein that these Shawnees be decreed by the Court; incorporated into and to ever after remain a part of the Cherokee nation, equal in every respect with a native Cherokee Indian in the Cherokee nation, in the Indian Territory.

Respectfully submitted.

CHARLES BROWNELL,
Counsel for the Appellee.